

EXHIBIT T

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
No.: 1:20-CV-05441 (KPF)(KWL)

UNIFORMED FIRE OFFICERS)
ASSOCIATION, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
BILL de BLASIO, et al.,)
)
 Defendants.)
_____)

REMOTE VIDEOTAPED DEPOSITION OF
 LESA MOORE
 Thursday, August 6, 2020

REPORTED BY:

RHONDA HALL-BREUWET, RDR, CRR, LCR, CCR, FPR

JOB NO. 28092

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August 6, 2020

1:04 p.m.

Videotaped Deposition of LESA MOORE,
held remotely before Rhonda Hall-Breuwet,
Registered Diplomate Reporter, Certified
Realtime Reporter, Licensed Court Reporter
(TN), Certified Court Reporter (GA and LA),
Florida Professional Reporter, and Notary
Public of the State of Florida.

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19 VIDEOGRAPHER:

20 JEREMY LeMASTER

I N D E X

PAGE

DIRECT EXAMINATION BY MR. COLES

9

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
EXHIBIT 1	Opinion of the Committee on Open Government, FOIL AO 19775, dated 7/27/20	65
EXHIBIT 2	Letter from Patrick J. Lynch, President of the Police Benevolent Association, to Dermot Shea, dated 6/29/20; Letter from Michael T. Murray, Police Benevolent Association, to Ernest Hart, dated 6/29/20	82

1 LESA MOORE

2 THE VIDEOGRAPHER: Good afternoon.

3 We are now on the record. Today's date is
4 August 6th, 2020, and the time is 1:04 p.m.
5 Eastern Standard Time.

6 This is the video deposition of
7 Lesa Moore in the matter of The Uniformed
8 Fire Officers Association, et al., versus
9 Bill de Blasio, et al., filed in the United
10 States District Court, Southern District of
11 New York, Case Number
12 1:20-cv-05441(KPF)(RWL).

13 This deposition is taking place
14 via web videoconference with all
15 participants attending remotely due to the
16 COVID-19 pandemic.

17 My name is Jeremy LeMaster. I am
18 the videographer representing TransPerfect,
19 and the document tech is Gabriela Alvarez.

20 Will counsel on the conference
21 please identify yourselves and state whom
22 you represent, beginning with the
23 questioning attorney.

24 MR. COLES: My name is Tony Coles.
25 Good afternoon, everybody. I represent the

1 LESA MOORE

2 plaintiffs, and I'm with the firm
3 DLA Piper, and I'm here with Evan North,
4 also from DLA Piper.

5 MS. SAINT-FORT: Good afternoon.

6 My name is Dominique Saint-Fort from the
7 New York City Law Department, Office of
8 Corporation Counsel, representing the
9 defendants, and I'm here with Rebecca
10 Quinn, also from my office representing
11 defendants.

12 THE VIDEOGRAPHER: Thank you,
13 Counsel.

14 The court reporter today is Rhonda
15 Hall-Breuwet representing TransPerfect.

16 The court reporter will now swear
17 in the witness.

18 CERTIFIED STENOGRAPHER: Raise
19 your right hand, please.

20 Do you solemnly swear the
21 testimony you are about to give will be the
22 truth, the whole truth, and nothing but the
23 truth?

24 THE WITNESS: Yes.

25 CERTIFIED STENOGRAPHER: Thank

1 LESA MOORE

2 you.

3 LESA MOORE

4 acknowledged having been duly sworn to tell
5 the truth and testified upon her oath as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. COLES:

9 Q Good afternoon, Ms. Moore. How
10 are you?

11 A I'm okay. How are you?

12 Q Okay.

13 Have you been deposed before?

14 A No.

15 Q So this will be your first
16 deposition and --

17 A Where I'm being deposed.

18 Q Excuse me?

19 A Where I'm being deposed.

20 Q Have you taken depositions?

21 A No.

22 Q Have you defended depositions?

23 A I have attended them.

24 Q Okay.

25 A As counsel.

1 LESA MOORE

2 Q All right. So just to give you
3 the quick ground rules is, I'll be asking
4 questions. You are under oath. So make sure
5 that you answer the questions to the best of
6 your ability. If you don't understand the
7 question, let me know and I'll try and
8 rephrase it. It's very important that we have
9 a clear record and a clear communication
10 between the two of us.

11 Does that make sense to you?

12 A Yes.

13 Q Good. If you want to take a break
14 at any time, that's fine. The only thing I
15 would ask is not take a break in the middle of
16 a question unless there's some attorney-client
17 privilege issue. Okay?

18 A Okay.

19 Q Good. You're here as a 30(b)(6)
20 witness on behalf of the City; is that right?

21 A Yes.

22 Q Okay. And you're here to talk
23 about the -- well, what's your understanding
24 of what you're here to talk about?

25 MS. SAINT-FORT: Objection. Form.

1 LESA MOORE

2 You can answer.

3 THE WITNESS: About our FOIL
4 policies and regarding the repeal of 50-a.

5 BY MR. COLES:

6 Q Okay. Are you here also to talk
7 about the policies and practices for handling
8 FOIL requests and the privacy of personnel
9 records? Would that be a fair statement?

10 MS. SAINT-FORT: Objection to
11 form.

12 You can answer.

13 THE WITNESS: Yes.

14 BY MR. COLES:

15 Q Okay. What is your current
16 position now?

17 A My title is managing attorney for
18 the civil section. I'm an agency attorney,
19 and essentially my role is to manage the FOIL
20 litigation received by NYPD and to oversee
21 their intake, assign them to attorneys,
22 overview of strategies for how to proceed with
23 a case, and ensuring that documents are filed
24 timely with the Court.

25 Q Okay. And how long have you had

1 LESA MOORE

2 that position?

3 A Since 2017.

4 Q Okay. Were you with the police
5 department before 2017?

6 A Yes.

7 Q And what position did you have?

8 A Agency attorney, and I believe for
9 two years I was the assistant counsel.

10 Q Okay. And agency attorney in
11 which group?

12 A With the -- I've been with the
13 NYPD civil section the entire time.

14 Q Okay. And when did you start with
15 the NYPD civil section?

16 A In November 2006.

17 Q Okay. And then was that
18 immediately after law school?

19 A Yes. A few months after.

20 Q Okay. How many people are in the
21 FOIL litigation section that you work in?

22 MS. SAINT-FORT: Objection to
23 form.

24 THE WITNESS: It's -- it's
25 fluctuated. I believe right now we have,

1 LESA MOORE

2 like, eight attorneys and myself as a
3 supervisor.

4 BY MR. COLES:

5 Q Okay. Do you supervise all eight
6 of the attorneys?

7 A On FOIL litigation, yes.

8 Q And to whom do you report?

9 A My immediate supervisor is David
10 Goldfarb, who is the director of the civil
11 section.

12 Q Okay. Do you supervise the police
13 department's record access officer?

14 A No.

15 Q Who is the police department
16 records access officer?

17 A Richard Mantellino.

18 Q Is he part of your group?

19 A No. He does not -- in the
20 organizational chart, he does not fall under
21 my group.

22 Q Okay. Have you ever personally
23 responded to a FOIL request?

24 A Yes.

25 Q In what capacity?

1 LESA MOORE

2 A As direct -- as -- in litigation
3 under the direction of Richard Mantellino.

4 Q Okay. When you say "in
5 litigation," by that do you mean cases that
6 have been challenged in one form or another by
7 a person requesting access?

8 A Yes.

9 Q And was there more than one
10 occasion when you personally responded to a
11 FOIL request?

12 A Yes.

13 Q And about how many occasions?

14 A I don't recall.

15 Q In responding to requests, did you
16 take direction from Mr. Mantellini [sic], or
17 did you apply your own discretion as to what
18 to produce?

19 A In consultation with him at times.

20 Q Okay. Would you say it's more
21 than five occasions?

22 A I would say more than five.

23 Q Okay. And less than ten?

24 MS. SAINT-FORT: Objection to
25 form.

1 LESA MOORE

2 You can answer.

3 THE WITNESS: I don't recall if
4 it's more than ten. I would -- I would
5 think over the years it's more than ten.

6 BY MR. COLES:

7 Q Okay. Did you have any
8 relationship with the City's chief privacy
9 officer, any reporting relationship?

10 A No, not -- no.

11 Q Do you know who the City's chief
12 privacy officer is?

13 A I don't recall. I think I've
14 heard the name before, but I don't recall who
15 it is.

16 Q Okay. And are you familiar with
17 any protocols or guidances that the chief
18 privacy officer has created with regard to
19 FOIL?

20 A I believe I've reviewed directions
21 issued by the law department on FOIL policy.

22 Q Okay. But my question was about
23 the directions issued by the chief privacy
24 officer. Can you think of any?

25 A I think -- I can't think off the

1 LESA MOORE

2 top of my head, but I know we've gotten
3 directives from the FOIL policy, and I do
4 believe it may have included directions that
5 were issued by the privacy officer.

6 Q Okay. Are there -- when you first
7 came into the group, were you given training
8 on FOIL-related matters?

9 A What do you --

10 MS. SAINT-FORT: Objection to
11 form.

12 You can answer the question. Go
13 ahead.

14 THE WITNESS: I have a question.
15 What do you mean by when I first came into
16 the group?

17 BY MR. COLES:

18 Q Well, I'll ask a proper question.
19 Have you been trained with regard to FOIL by
20 the police department?

21 A Yes.

22 Q Okay. And can you describe that
23 training?

24 A Well, I've been -- when I started
25 in 2006 and in the years preceding, a

1 LESA MOORE
2 supervisor would assign me for litigation
3 cases to defend in the Supreme Court. And in
4 addition, we've also done train- -- like we
5 strategized together, and I believe I was
6 given a primer on FOIL, and we strategized on
7 cases over the years until I took over as
8 supervisor.

9 Q Okay. Are you aware of written
10 policies that the department has for handling
11 FOIL requests?

12 A No, not -- not -- I believe that
13 there are guidelines we -- we follow, but I
14 don't believe that there's, like, a specific
15 written policy that I've seen.

16 Q Okay. Are there written --

17 A I know we follow the Public
18 Officers Law.

19 Q Okay. Are there written
20 guidelines?

21 A Not that I'm aware of. I'm aware
22 that there is -- I believe it's a patrol guide
23 or an admin guide that says that we can -- if
24 we receive a FOIL request in a unit, you are
25 supposed to respond to the FOIL unit about the

1 LESA MOORE

2 request that you receive. I don't believe
3 it's more specific than that.

4 Q Okay. So just so I'm clear, to
5 the best of your knowledge sitting today, you
6 don't know of any written guidelines the
7 police department has issued with regard to
8 how to respond to FOIL requests other than
9 what you've testified to?

10 A No.

11 Q Okay. Do you know whether or not
12 the police department has written guidelines
13 on the privacy of personnel records?

14 A I believe in the patrol guide
15 there might be one or two lines that talk
16 about -- in various patrol guides that say
17 that personnel records are confidential, maybe
18 one or two times. I just -- I don't recall,
19 like, a written policy, though, like an entire
20 patrol guide on it.

21 Q Okay. What specifically do you
22 remember from the patrol guide?

23 A I remember reviewing a patrol
24 guide procedure that says personnel records --
25 like, I think in the footnotes it says

1 LESA MOORE

2 personnel records are confidential records.

3 Q And do you know what section of
4 the patrol guide that was in?

5 A No. I don't recall.

6 Q Okay. Do you know what training
7 the records access officer receives from the
8 police department?

9 A I know that in the past we've had
10 the FOIL litigation supervisors train the FOIL
11 section, give a presentation on it. Beyond
12 that, we've had the same FOIL person for a
13 long time. So I'm not aware of anything else
14 that we do.

15 Q Okay. When you say -- when you
16 say "the same FOIL person," you mean the same
17 records access officer?

18 A Richard Mantellino's been the
19 records access officer for several years now.
20 So any training would have gotten would have
21 been before I was in the position, so I
22 haven't had to train any. I do know that when
23 the prior supervisor was there that they did
24 do training in FOIL.

25 Q Who did the -- who was trained in

1 LESA MOORE

2 FOIL?

3 A Everybody who was assigned to the
4 FOIL unit at that time.

5 Q Okay. And did you participate in
6 that training or was that --

7 A No, I --

8 Q -- before your time?

9 A No, I didn't participate in it. I
10 knew about it, that it occurred.

11 Q And is it fair to say that you did
12 not have that training when you joined the
13 unit? That was before your time?

14 A No. It --

15 MS. SAINT-FORT: Objection to
16 form.

17 THE WITNESS: -- during my --

18 MS. SAINT-FORT: You can answer.

19 THE WITNESS: It was during my
20 tenure there, but I was assigned to the
21 litigation unit, and I know that the
22 litigation supervisor at the time did train
23 them. But I did not attend the training.

24 BY MR. COLES:

25 Q Now, I guess my specific question

1 LESA MOORE

2 was whether or not you know the training that
3 Mr. Mantellino, the records access officer,
4 was given before he was named the records
5 access officer.

6 A I'm not aware of any -- of him
7 being trained.

8 Q Okay.

9 A Before he was the record access
10 officer. I'm not -- I don't know what
11 training he would have gotten.

12 Q Okay. Have you had any training
13 relating to the privacy of personnel records?

14 A No.

15 Q How does the department go about
16 evaluating whether or not a certain record
17 is -- a certain personnel record is private?

18 MS. SAINT-FORT: Objection to
19 form.

20 You can answer, if you understand.

21 THE WITNESS: Could you rephrase
22 your question? I'm not quite sure what
23 you -- like, what you're asking.

24 BY MR. COLES:

25 Q Sure. Are you familiar with the

1 LESA MOORE

2 Freedom of -- the state Freedom of Information
3 Law?

4 A Yes.

5 Q Okay. And are you familiar with
6 Section 87 of that law that refers to access
7 to agency records?

8 A Yes.

9 Q Okay. And are you familiar with
10 Section 87(2)(b), which talks about an
11 exemption from FOIL for records, if disclosed,
12 would constitute an unwarranted invasion of
13 personal privacy? Are you familiar with that?

14 A Yes.

15 Q What are the protocols that the
16 department uses to determine whether or not a
17 request seeks documents that would constitute
18 an unwarranted invasion of personal privacy?

19 A Do you mean in the FOIL unit?

20 Q No. I mean the police department,
21 the -- the police department in responding to
22 FOILs.

23 A In responding to a FOIL request?

24 Q Yes.

25 A Well, whoever is assigned is aware

1 LESA MOORE

2 that if there's personal information listed in
3 records that it's supposed -- we're supposed
4 to claim the public -- the Public Officers Law
5 privacy exemption.

6 Q Have you -- are you aware of any
7 other protocols that address the scope of the
8 privacy exemption or how to analyze whether or
9 not the privacy exemption applies?

10 MS. SAINT-FORT: Objection to
11 form.

12 You can answer.

13 THE WITNESS: I'm not quite sure I
14 understand what you're asking me.

15 BY MR. COLES:

16 Q Is one of the factors that the
17 department looks at in determining whether or
18 not a production of documents would be an
19 unwarranted invasion of privacy?

20 A In the context of FOIL?

21 Q Yes.

22 A So we -- the person who was
23 assigned a FOIL request would have to look at
24 what exactly is being sought, what documents
25 exist, and then look at the information in

1 LESA MOORE

2 there. And then if it contains PI -- personal
3 identifiable information, they are supposed to
4 claim privacy.

5 Q Okay. And what do you mean when
6 you say "personal identifying information"?
7 Can you describe that?

8 A Like if somebody's home address,
9 telephone number, email address is listed in
10 records, we are -- date of birth, we are --
11 that sort of information, we're trained that
12 -- that we should be claiming privacy.

13 Q Okay. Any other type of
14 information that you consider private?

15 A It's just -- it's such a long
16 list, like I can't just come up with a list.
17 It's a long list. Like the most common are
18 the ones I named.

19 Q Okay. Do you feel as a -- do you
20 feel the department has a responsibility to
21 protect the privacy of an officer when
22 responding to a FOIL request?

23 MS. SAINT-FORT: Objection to
24 form, and also outside the scope of this
25 deposition.

1 LESA MOORE

2 My understanding is that we're
3 talking about FOIL policies and practices.
4 She's testifying as a witness for the NYPD.
5 Her feelings as to whether a particular
6 policy is appropriate or not is not an
7 appropriate question here.

8 MR. COLES: I didn't mean to ask
9 about feeling.

10 BY MR. COLES:

11 Q Does the department have a
12 responsibility to protect the privacy of an
13 officer when responding to a FOIL request?

14 A We do protect the privacy of an
15 officer when responding to FOIL requests.

16 Q Do you feel you have -- does the
17 department have a responsibility to protect
18 the privacy?

19 MS. SAINT-FORT: Objection. Asked
20 and answered.

21 You can answer again.

22 THE WITNESS: We do protect the
23 privacy of police officers if records are
24 requested regarding them.

25 ///

1 LESA MOORE

2 BY MR. COLES:

3 Q I know, but you're not answering
4 my question directly. My question is, does
5 the department have a responsibility to do
6 that?

7 MS. SAINT-FORT: Same objection.

8 THE WITNESS: We have a
9 responsibility to apply the law.

10 BY MR. COLES:

11 Q So would it be fair to say that
12 the department has a responsibility to protect
13 the unwarranted invasion of privacy of police
14 officers in connection with FOIL requests?

15 MS. SAINT-FORT: Objection to
16 form.

17 You can answer.

18 THE WITNESS: We are already --
19 whenever we get a request, it's part of our
20 standard protocol is to review records to
21 make sure we're protecting anyone's
22 privacy.

23 BY MR. COLES:

24 Q And do you review every request
25 that comes in to make sure that privacy is

1 LESA MOORE

2 protected?

3 A You mean in FOIL?

4 Q Yes.

5 A No. I wouldn't review the
6 request.

7 Q Does the department review each
8 FOIL request before responding to make sure
9 that the privacy of the officer is protected?

10 MS. SAINT-FORT: Objection.

11 You can answer.

12 THE WITNESS: The department --
13 the persons who are assigned review.
14 Whoever is assigned to is assigned to
15 review the records for privacy and any
16 other exemptions that apply.

17 BY MR. COLES:

18 Q And that would be done for each
19 FOIL request; is that right?

20 A Yes, for every FOIL request.

21 Q Okay. In other words, you would
22 look at each FOIL request individually to
23 determine whether or not the requested
24 documents would be an unwarranted invasion of
25 privacy; is that right?

1 LESA MOORE

2 A We are looking for every
3 exemption -- all the exemptions that apply,
4 including privacy.

5 Q Okay. Other than what you've
6 testified to, do you have any other
7 information about the factors that the
8 department applies in determining whether or
9 not a request would constitute an unreasonable
10 invasion of privacy?

11 MS. SAINT-FORT: Objection.

12 You can answer.

13 THE WITNESS: No. I think it's --
14 it's a file-by-file review based on the
15 request that's received.

16 BY MR. COLES:

17 Q Okay. Do you also make a
18 file-by-file review to determine whether or
19 not a release of documents would present a
20 risk of safety?

21 A Yes. That's one of the
22 exemptions.

23 Q Okay. And is a file-by-file
24 review done to make sure that any documents
25 produced don't create a risk of safety to an

1 LESA MOORE

2 officer?

3 MS. SAINT-FORT: Objection.

4 You can answer.

5 THE WITNESS: Yes. It's -- it's

6 for every -- we apply all the exemptions.

7 So when we receive a record, we're

8 reviewing it for every exemption including

9 life and safety.

10 BY MR. COLES:

11 Q Does the department have a
12 responsibility to protect the safety of
13 officers when responding to FOIL requests?

14 MS. SAINT-FORT: Objection.

15 You can answer.

16 THE WITNESS: I think we have a
17 responsibility to apply the law.

18 BY MR. COLES:

19 Q Can you answer my question,
20 though?

21 A We have a responsibility to apply
22 the law.

23 Q My question was does the
24 department have a responsibility to protect
25 the safety of an officer when responding to a

1 LESA MOORE

2 FOIL request?

3 A I think we have a responsibility
4 to apply the law.

5 Q No, I understand that. But my
6 question was specifically directed to safety.

7 MS. SAINT-FORT: The witness has
8 already answered the question.

9 BY MR. COLES:

10 Q Is there anything you want to add
11 to your answer?

12 A No.

13 Q Okay. So -- are you sure?

14 A Yes.

15 Q Okay. What training does the
16 police department give to FOIL officers as to
17 the factors they should apply in determining
18 whether a request would create a risk of
19 safety to an officer?

20 A It would be what's in Public
21 Officers Law and -- and the other exemptions
22 that we frequently apply in FOIL.

23 Q How would you go about determining
24 whether or not a certain request would put at
25 risk the safety of an officer?

1 LESA MOORE

2 A So in -- we know that Public
3 Officers Law has a life and safety exemption
4 and we know that it's frequently been applied
5 to people's home addresses, there are ways to
6 locate them, so that's a type of information
7 that would be used to determine life -- in
8 reviewing it, you look at the type of
9 information that's in a record to determine
10 whether or not you claim life and safety or
11 privacy.

12 Q Right. Are the factors different,
13 in your mind, for determining whether or not
14 there's a privacy exemption as opposed to a
15 safety exemption?

16 A Yes. It's two separate
17 exemptions.

18 Q Okay. And what are the different
19 factors that it would apply to safety that may
20 not apply to privacy?

21 MS. SAINT-FORT: Objection to
22 form.

23 You can answer.

24 THE WITNESS: Well, so for life
25 and safety, we even take into consideration

1 LESA MOORE

2 the number of officers assigned to a
3 specific location and not giving out that
4 information, which would not be -- that's
5 one of the -- what should not be privacy
6 but would be life and safety.

7 BY MR. COLES:

8 Q Anything -- I'm sorry. Go ahead.

9 A So that you would take into
10 consideration the information that's listed in
11 the document you're about to determine if you
12 should release.

13 Q Do you ever make a determination
14 as to whether or not publicly releasing the
15 name of an officer would create a risk of
16 safety?

17 A I believe that there -- it has
18 been considered in prior FOIL responses.

19 Q When you say "prior FOIL
20 responses," what do you mean by that?

21 A In making a decision on whether or
22 not we will release information, we have
23 thought about whether or not releasing the
24 name of the personal would be problematic.

25 Q And how do you go about deciding

1 LESA MOORE

2 whether or not it would be problematic?

3 A We look at what the record
4 reveals, we look at the totality of the
5 circumstances that we know about in making
6 that determination.

7 Q And you understand, obviously,
8 it's important to protect the safety of an
9 officer, right?

10 MS. SAINT-FORT: Objection to
11 form.

12 You can answer.

13 THE WITNESS: Could you repeat
14 your question?

15 MR. COLES: The court reporter can
16 read it back.

17 (Previous question read back.)

18 THE WITNESS: Right.

19 BY MR. COLES:

20 Q Okay. And in determining whether
21 or not a response to a FOIL would create a
22 risk of safety, you make a file-by-file
23 determination, correct?

24 A Yes.

25 Q Is it fair to say that in every

1 LESA MOORE

2 FOIL the department looks at, it makes a
3 determination as to whether or not the privacy
4 exemption applies?

5 A Yes.

6 Q Is it also fair to say that with
7 respect to every FOIL request that the
8 department responds to, it makes a
9 determination as to whether or not the safety
10 exemption applies?

11 A Yes.

12 Q Have you had any training in
13 collective bargaining?

14 MS. SAINT-FORT: Objection.

15 Outside the scope of this deposition.

16 THE WITNESS: Not -- no, not --

17 MS. SAINT-FORT: You don't have to
18 answer, Lesa.

19 THE WITNESS: Oh, sorry.

20 BY MR. COLES:

21 Q Ma'am, are you familiar with
22 87(2)(c) of the FOIL law which says that if
23 disclosed, would impair a present or imminent
24 contract awards or collective bargaining
25 negotiations?

1 LESA MOORE

2 A Yes.

3 Q Okay. Now, have you had any
4 training in collective bargaining?

5 MS. SAINT-FORT: Objection.

6 You'll have to clarify if you're talking
7 about the use of that response as an
8 exemption to FOIL, not a general question
9 about collective bargaining. That would be
10 outside the scope of this deposition.

11 BY MR. COLES:

12 Q How do you understand that
13 exemption to apply?

14 A Just as it's listed in the
15 statute. If there's a contract that is
16 pending or there is a collective bargaining
17 agreement that's pending and it's not been
18 finalized, then we can assert that exemption.

19 Q It also gets asserted, according
20 to 87(2)(c), if there's a present contract, a
21 contract in place, correct?

22 A I -- I'm not -- I'm not sure that
23 I'm -- I know that for certain. I just know
24 that we reviewed that -- we can review that
25 statute and we can use it.

1 LESA MOORE

2 Q Okay. Is -- what are the factors
3 that you apply in reviewing whether or not a
4 disclosure under FOIL would impair present or
5 imminent collective bargaining?

6 A I don't -- I don't know if
7 we've -- I don't know if we've ever had to do
8 that. I know we've used the contract portion,
9 definitely.

10 Q Okay. Have you personally ever
11 reviewed the collective bargaining agreements
12 of any of the plaintiffs in this action?

13 MS. SAINT-FORT: Objection.
14 That's outside the scope of this
15 deposition.

16 So I'm instructing the witness not
17 to answer.

18 MR. COLES: Okay. I'm not going
19 to object to every instruction not to
20 answer, but I'm just going to have a
21 blanket objection to those so we can take
22 them up at the end.

23 MS. SAINT-FORT: Sure.

24 BY MR. COLES:

25 Q In responding to FOIL requests,

1 LESA MOORE

2 does the department consider whether or not
3 the requested documents would be inconsistent
4 with the collective bargaining agreements that
5 cover the union that the subject officer is
6 in?

7 A I'm not -- I don't know.

8 Q In the few times that you
9 responded to FOIL requests, did you make any
10 effort to become familiar with the collective
11 bargaining agreements of the -- that cover the
12 officers whose documents you were producing?

13 MS. SAINT-FORT: Objection to
14 form.

15 You can answer.

16 THE WITNESS: So I've not had any
17 cases where that's been an issue.

18 BY MR. COLES:

19 Q How do you know, if you haven't
20 read the collective bargaining agreements?

21 A How do I know? I know what
22 FOIL -- even if I -- I know that we -- I've
23 not applied the collective bargaining section
24 in any of the -- in any of the REO decisions
25 I've ever made.

1 LESA MOORE

2 Q Have you considered whether or not
3 the collective bargaining exemption might
4 apply?

5 MS. SAINT-FORT: Objection.

6 You can answer.

7 THE WITNESS: No. We -- in terms
8 of the different exemptions that we
9 consider, I can -- I can say I've not
10 applied it.

11 BY MR. COLES:

12 Q And is that a true -- true for the
13 department as a whole?

14 MS. SAINT-FORT: Objection.

15 THE WITNESS: I don't know if
16 that --

17 MS. SAINT-FORT: You can go ahead.

18 THE WITNESS: I don't know.

19 BY MR. COLES:

20 Q Did you try to determine whether
21 or not the department applies the collective
22 bargaining exemption before qualifying as a
23 30(b)(6) witness today?

24 MS. SAINT-FORT: Objection.

25 You can answer.

1 LESA MOORE

2 THE WITNESS: No.

3 BY MR. COLES:

4 Q Why not?

5 Do you have an answer to the
6 question?

7 A I didn't hear any question.

8 Q The question was, why didn't you?

9 A Oh. I wasn't aware that was a
10 part of the topic.

11 Q Okay. Are you aware of any
12 training that the department gives to FOIL
13 officers with regard to the collective
14 bargaining agreements that the City has
15 entered into?

16 A I'm not aware. I don't know.

17 Q Okay. Does the City have a
18 responsibility to protect the collective
19 bargaining rights of an officer when
20 responding to a FOIL request?

21 MS. SAINT-FORT: Objection.

22 You can answer.

23 THE WITNESS: I think the City
24 is -- and the police department in
25 particular or FOIL unit is required to

1 LESA MOORE

2 follow the law.

3 BY MR. COLES:

4 Q I had a more specific question.

5 A We're required to follow the law.

6 I can't be more specific than that.

7 Q Well, as part of the law, do you
8 believe the department has a responsibility to
9 protect the collective bargaining rights of an
10 officer when responding to FOIL?

11 MS. SAINT-FORT: Objection.

12 THE WITNESS: I believe -- I
13 believe we have a -- we have a
14 responsibility to apply the law.

15 BY MR. COLES:

16 Q No, I have that answer. I was
17 asking a more specific question. My more
18 specific question is whether or not the
19 department has a responsibility to protect the
20 collective bargaining rights of officers when
21 responding to a FOIL request.

22 MS. SAINT-FORT: Objection. The
23 witness has already answered that question.

24 BY MR. COLES:

25 Q Can you answer that yes or no?

1 LESA MOORE

2 MS. SAINT-FORT: The witness
3 already answered.

4 BY MR. COLES:

5 Q Yes, I'm asking whether or not you
6 can ask -- yes or no, whether or not the
7 department has a responsibility to protect the
8 collective bargaining rights of an officer
9 when responding to FOIL.

10 A I can't -- I can't answer that yes
11 or no.

12 Q And why is that?

13 A Because I believe we have a
14 right -- we have a responsibility to apply the
15 law.

16 Q Okay. Is there anything that you
17 want to add to your answer?

18 A No.

19 Q Are you sure?

20 A Yes.

21 Q Okay. Do you know whether or not
22 the department provides training to its FOIL
23 officers as to whether settlement agreements
24 entered into should be produced under FOIL?

25 A I don't think there's been a -- I

1 LESA MOORE

2 think that we have had discussions about
3 training, and there have been discussion about
4 types of records that, given the repeal of
5 50-a, will be produced.

6 Q Can you please expand on that a
7 little bit?

8 A We -- so we started -- we are
9 formulating policy on given the repeal of 50-a
10 what will be the records that will be produced
11 under FOIL, and there was a few training
12 sessions to train additional persons who are
13 not assigned to the FOIL unit on FOIL law.

14 Q Who conducted that training?

15 A James Conroy.

16 Q And who is he?

17 A He's -- I believe his title is
18 director of transparency, I believe.

19 Q Okay. And how do you know about
20 that training?

21 A I was invited to the training, and
22 I discussed it with Jim.

23 Q Did you participate in the
24 training?

25 A No.

1 LESA MOORE

2 Q Do you know what documents were
3 used to train the -- the FOIL officers?

4 MS. SAINT-FORT: Objection to
5 form.

6 You can answer.

7 THE WITNESS: I believe the law
8 itself and the new law, and I'm not sure
9 what else he used. But I know the actual
10 Public Officers Law and the revised -- the
11 new version of Public Officers Law with the
12 changes that the repeal of 50-a, the actual
13 law was -- was used in the training. I
14 don't know what other materials he used.

15 BY MR. COLES:

16 Q Did you attend the training
17 session?

18 A No.

19 MS. SAINT-FORT: Object.

20 BY MR. COLES:

21 Q Did you have an opportunity to
22 review the materials that were used?

23 A I believe so. I believe I
24 reviewed the -- the actual law.

25 Q Other than the actual law, did you

1 LESA MOORE

2 review any materials that the department
3 prepared?

4 A Yes.

5 Q What were those?

6 A I believe there was a memo from
7 the law department that I reviewed on the
8 application of the law following the repeal.
9 There was a Word document which included the
10 sections of the law and the common exemptions
11 used in FOIL, and I believe maybe a
12 PowerPoint. I can't quite remember what it
13 addressed. I think it addressed common
14 exemptions used in FOIL.

15 Q And who prepared the PowerPoint?

16 A I'm not sure who was the original
17 person who prepared it. I believe maybe Jim
18 revised it. I'm not sure.

19 Q Okay. And just so we have a clear
20 record, ma'am, can you tell me who got the
21 training that Mr. Conroy provided?

22 A It would have been some of the
23 attorneys assigned to the legal bureau but who
24 are not assigned to the FOIL unit.

25 Q Okay.

1 LESA MOORE

2 A I'm not sure who else got
3 training. I'm not sure if anybody else in the
4 legal bureau got trained, but . . .

5 Q Okay. Have you ever received any
6 training in due process rights of police
7 officers?

8 MS. SAINT-FORT: Objection.

9 Outside the scope of this deposition.

10 So the witness will not answer.

11 BY MR. COLES:

12 Q In reviewing FOIL requests, do you
13 take into account whether or not the
14 production of a certain document would violate
15 somebody's constitutional rights?

16 A I believe the FOIL unit takes into
17 consideration the Public Officers Law section
18 that deals with interference and right to a
19 fair trial.

20 Q Okay. Do you know whether or
21 not -- does the City take into account or the
22 police department take into account whether or
23 not the production of certain documents would
24 violate an officer's constitutional rights?

25 MS. SAINT-FORT: Objection to

1 LESA MOORE

2 form.

3 You can answer.

4 THE WITNESS: I don't know about
5 constitutional rights in general. I know
6 that in regards to making a decision that
7 the investigator is supposed to review the
8 records and consider interference exemption
9 and that applies in Public Officers Law.

10 BY MR. COLES:

11 Q Okay. I was asking specifically
12 whether or not you know if the department
13 makes a determination as to whether or not a
14 production would violate constitutional
15 rights.

16 A So the ones -- the one that I do
17 know of is the right to a fair trial. That is
18 encapsulated into interference exemption,
19 which is a section of Public Officers Law that
20 says you can't release law enforcement records
21 that would interfere with a trial.

22 Q Right. And are there -- I'm
23 sorry. Please finish your answer, ma'am.

24 A Or an ongoing judicial proceeding.

25 Q Would that include -- are there

1 LESA MOORE
2 any other constitutional rights that you think
3 a FOIL -- that the City has FOIL officers
4 apply when looking at specific --

5 MS. SAINT-FORT: Objection.

6 BY MR. COLES:

7 Q Let me get the question in.

8 Are there any other constitutional
9 rights that the department looks at in
10 determining whether or not to produce
11 documents in response to a FOIL request?

12 MS. SAINT-FORT: Objection to
13 form.

14 You can answer.

15 THE WITNESS: I can't -- I can't
16 answer that. Like, there are several
17 constitutional rights. I -- the ones that
18 I can think of off the top of my head is
19 the right to the fair trial that is
20 encapsulated in Public Officers Law.

21 BY MR. COLES:

22 Q Does the department still make
23 individualized review on a file-by-file basis
24 of requests for disciplinary records since the
25 repeal of 50-a?

1 LESA MOORE

2 MS. SAINT-FORT: Objection.

3 You can answer.

4 THE WITNESS: So thus far we have
5 not gotten to that stage yet because so far
6 we've only acknowledged the requests. So
7 we haven't gotten to the review of the
8 records for the exemptions yet.

9 BY MR. COLES:

10 Q Okay. But do you plan to
11 review -- does the City plan to review whether
12 or not the exemptions apply on a
13 request-by-request basis?

14 A Yes.

15 MS. SAINT-FORT: I just want to
16 clarify that you mean the NYPD, not the
17 City generally, correct, Tony?

18 THE WITNESS: Yeah.

19 BY MR. COLES:

20 Q So just so we have a clear record,
21 ma'am, the department plans to apply on a
22 case-by-case basis the FOIL exemptions to
23 FOILs that were made after the repeal of 50-a;
24 is that correct?

25 A Yes. We will be reviewing them,

1 LESA MOORE

2 and we will be making a case-by-case
3 determination based on each request.

4 Q Okay. Are you familiar with the
5 Committee on Open Government?

6 MS. SAINT-FORT: Objection.

7 You can answer whether you're
8 familiar subject to further objection.

9 THE WITNESS: Yes.

10 BY MR. COLES:

11 Q Okay. And have you had training
12 on the role of the Committee on Open
13 Government?

14 MS. SAINT-FORT: Objection.
15 Outside the scope.

16 MR. COLES: It's not outside the
17 scope.

18 MS. SAINT-FORT: It's a very broad
19 question about whether she's aware -- does
20 that -- the subject of this deposition is
21 FOIL. So unless you connect it to the
22 subject of this deposition, it's a very
23 broad, open question that's not clearly
24 relevant to the topic of this deposition.

25 MR. COLES: Let's have the

1 LESA MOORE

2 question read back, please.

3 MS. SAINT-FORT: Sure.

4 (Previous question read back.)

5 MS. SAINT-FORT: The objection
6 remains.

7 BY MR. COLES:

8 Q You can answer the question.

9 MS. SAINT-FORT: I'm instructing
10 the witness not to answer. It's outside
11 the scope of the deposition.

12 BY MR. COLES:

13 Q Are you aware that the Committee
14 on Open Government has a relationship to FOIL
15 policy?

16 A Yes.

17 Q Okay. Are you aware that the
18 Committee on Open Government sets standards
19 with regard to FOIL?

20 MS. SAINT-FORT: Objection.

21 You can answer.

22 THE WITNESS: Yes.

23 BY MR. COLES:

24 Q Okay. And does the department
25 look to the Committee on Open Government for

1 LESA MOORE

2 information regarding the standards that apply
3 to FOIL requests?

4 A We have reviewed some of their
5 advisory opinions.

6 Q Okay. And why do you review their
7 advisory opinions?

8 A We might be trying to make a
9 determination on whether or not we -- an
10 exemption applies to something and we might
11 review some advisory opinions from the
12 committee to see where -- if they've addressed
13 the topic and what -- what decision they made.

14 Q Okay. What kind of deference do
15 you give to the advisory opinions issued by
16 the Committee on Open Government?

17 A If it's -- if the -- if the topic
18 that we're reviewing an exemption for has been
19 applied in case law and their decision is
20 consistent with the case law, we will apply
21 the same decision consistent with case law and
22 what the committee said.

23 Q Okay. Does the department give
24 deference to the committee's advisory opinions
25 as to what should be produced or not produced

1 LESA MOORE

2 under FOIL?

3 MS. SAINT-FORT: Objection.

4 You can answer.

5 THE WITNESS: Only to the extent

6 where it mesh -- it agrees with the case

7 law. If there's case law in the area. And

8 if there's no case law, we will take it

9 into consideration. I don't know if --

10 it's not necessarily that we will make the

11 same decision that they made.

12 BY MR. COLES:

13 Q Can you explain, then, how you
14 view the guidance from the Committee on Open
15 Government?

16 A We view it as guidance.

17 Q Okay. Are you aware of any
18 examples where the department has disagreed
19 with the Committee on Open Government with
20 regard to the production of disciplinary
21 records?

22 MS. SAINT-FORT: Objection.

23 You can answer.

24 THE WITNESS: I'm not aware.

25 ///

1 LESA MOORE

2 BY MR. COLES:

3 Q Can you think of any instance
4 where the department has disagreed with a
5 advisory opinion by the Committee on Open
6 Government regarding personnel records?

7 MS. SAINT-FORT: Objection.

8 You can answer.

9 THE WITNESS: I'm not aware.

10 BY MR. COLES:

11 Q Do you know whether or not the
12 FOIL access officer stays current with the
13 advisory opinions issued by the Committee on
14 Open Government?

15 A I don't know.

16 Q Is that part of his job
17 responsibility?

18 MS. SAINT-FORT: Objection.

19 You can answer.

20 THE WITNESS: I'm trying to
21 recall. I can't exactly recall in the
22 written descriptions of his job
23 descriptions. I don't think it's there,
24 though. I don't think it says in there
25 that he has to review Committee on Open

1 LESA MOORE

2 Government advisory opinions.

3 BY MR. COLES:

4 Q Do you know whether or not he does
5 on a regular basis?

6 A I don't know.

7 Q Do you know whether or not anyone
8 at the department does on a regular basis?

9 A I know that we review at times
10 their annual reports. I try to review it.
11 And we do review -- I know that the -- we do
12 review from time to time when we're
13 researching topics, we will look at their
14 advisory opinions.

15 Q And you look on their advisory
16 opinions for guidance on the topics you're
17 researching; is that correct?

18 MS. SAINT-FORT: Objection.

19 THE WITNESS: Yes.

20 MS. SAINT-FORT: You can answer.

21 THE WITNESS: Yes.

22 BY MR. COLES:

23 Q Do you have an understanding that
24 the Committee on Open Government is the
25 statewide authority on the proper application

1 LESA MOORE

2 of FOIL?

3 MS. SAINT-FORT: Objection.

4 You can answer.

5 THE WITNESS: I think they are
6 able to give guidance on FOIL.

7 BY MR. COLES:

8 Q Do you view them as a statewide
9 authority?

10 A Yes.

11 Q Okay. Are you aware that the
12 committee has long held that the release of
13 unsubstantiated allegations of misconduct
14 would constitute an unreasonable invasion of
15 personal privacy?

16 MS. SAINT-FORT: Objection. Are
17 you asking within the context of FOIL?

18 MR. COLES: Yes.

19 MS. SAINT-FORT: You can answer.

20 THE WITNESS: Yes.

21 BY MR. COLES:

22 Q Okay. Is that a policy that the
23 police department follows as well?

24 A So we are currently -- based on
25 the change in the repeal of 50-a, we are

1 LESA MOORE
2 currently creating policy. I -- prior to
3 this, our policy was not to -- was 50-a. So
4 that was -- that was our decision. Our
5 decision would have said 50-a.

6 Q My question was a little
7 different. Do you agree with the advisory
8 opinions of the -- does the department agree
9 with the advisory opinions from the Committee
10 on Open Government that unfounded allegations,
11 the release of unfounded allegations would be
12 an unwarranted invasion of personal privacy?

13 MS. SAINT-FORT: Objection.

14 You can answer to the extent
15 you're not revealing privileged
16 information.

17 THE WITNESS: So prior to the
18 repeal of 50-a, we would not have been --
19 we wouldn't have gotten to -- we wouldn't
20 have gotten to the point of saying
21 unsubstantiated or protected by anything
22 because we would have just said 50-a, and
23 that would have been a complete bar.

24 BY MR. COLES:

25 Q Right. The Committee on Open

1 LESA MOORE

2 Government has said that regardless of 50-a,
3 the release of unsubstantiated allegations for
4 any City employee would be an unreasonable
5 invasion of personal privacy, right?

6 MS. SAINT-FORT: Objection.

7 You can answer if you're aware
8 that that is a true statement.

9 THE WITNESS: We have read
10 advisory opinion, at least one, that does
11 say that information.

12 BY MR. COLES:

13 Q Okay. And is that an advisory
14 opinion that the department agrees with?

15 MS. SAINT-FORT: Objection.

16 You can answer.

17 THE WITNESS: I don't -- we are in
18 the process of determining what our policy
19 would be. So I think we are aware of it,
20 and we will certainly take it into
21 consideration in formulating a final
22 policy, but it will be taken in
23 consideration.

24 BY MR. COLES:

25 Q I didn't ask you whether or not it

1 LESA MOORE
2 was going to be taken into consideration. I
3 asked you today whether or not the police
4 department's policy follows the Committee on
5 Open Government that the release of
6 unsubstantiated allegations constitutes an
7 unreasonable invasion of personal privacy.

8 MS. SAINT-FORT: Objection.

9 THE WITNESS: We have --

10 MS. SAINT-FORT: You can answer.

11 THE WITNESS: Okay.

12 We have not issued -- since the
13 repeal of 50-a, we have not issued any REO
14 or appeals officer decision on records.
15 Therefore, we have not -- we have not -- we
16 have not reached the point where we have
17 actually addressed that.

18 BY MR. COLES:

19 Q When you say "that," what are you
20 referring to?

21 A In terms of we've not issued any
22 decision where we've had to actually say we
23 have taken the position that unsubstantiated
24 records are not to be released.

25 Q Okay. My question is, is that the

1 LESA MOORE

2 position of the police department?

3 MS. SAINT-FORT: Objection.

4 BY MR. COLES:

5 Q Under FOIL.

6 MS. SAINT-FORT: I'm going to
7 object on the basis of privilege. The
8 witness has said that's continued
9 discussion. So I'm objecting on the basis
10 of deliberative process privilege and
11 instructing her not to answer.

12 BY MR. COLES:

13 Q I'd like to know, sitting here
14 today, what the police department's position
15 is as to whether or not the release of
16 unsubstantiated allegations would be a
17 unreasonable invasion of privacy under FOIL.

18 MS. SAINT-FORT: The witness has
19 said that there has not been a
20 determination.

21 MR. COLES: Let the witness
22 answer, please.

23 MS. SAINT-FORT: She has.

24 MR. COLES: Let the witness
25 answer.

1 LESA MOORE

2 BY MR. COLES:

3 Q What is the position today?

4 MS. SAINT-FORT: You can repeat
5 your answer, Ms. Moore.

6 THE WITNESS: We are making -- we
7 haven't answered any of the requests that
8 came in post the change in -- in 50-a. So
9 we have not had to make an affirmative
10 determination as yet.

11 We are in the process of creating
12 policy about how we will address all these
13 records, including, and we have -- we are
14 taking into consideration the advisory
15 opinion which says that unsubstantiated
16 disciplinary matters are protected by
17 privacy. I don't -- we are still coming up
18 with what our post 50-a repeal policy will
19 be.

20 BY MR. COLES:

21 Q Prior to the repeal of 50-a, what
22 was the police department's policy as to
23 whether or not unsubstantiated allegations
24 would be an unwarranted invasion of privacy
25 under FOIL?

1 LESA MOORE

2 A We never got to that point.

3 As I said before, if somebody was
4 not the member of service would request a
5 member of service's disciplinary record, any
6 third party, they would have gotten a decision
7 that said 50-a bars the release. It would
8 not -- we don't -- we wouldn't have gone into
9 details to say unsubstantiated is this or
10 substantiated disciplinary record is this. It
11 would have been we made a decision based on
12 50-a that it's a disciplinary record. You're
13 not entitled to it under FOIL.

14 Q But I'm asking as the 30(b)(6)
15 representative of the police department, what
16 was the police department's position before
17 the repeal of 50-a as to whether or not the
18 release of unsubstantiated allegations would
19 be an unwarranted invasion of privacy?

20 MS. SAINT-FORT: Objection. You
21 can answer.

22 THE WITNESS: Our position was
23 that everything was barred from release by
24 50-a. So we wouldn't have had to make a
25 decision about whether or not it -- an

1 LESA MOORE

2 unsubstantiated decision would have been a
3 privacy invasion because we would have just
4 said 50-a.

5 So we didn't -- we never had to
6 have a formal policy on unsubstantiated
7 because the decision was always we would
8 just state it's 50-a. Unless you have a
9 release from the member of service, you
10 cannot get anything.

11 BY MR. COLES:

12 Q Okay. So is it your testimony
13 that the police department did not have a
14 policy as to whether or not unsubstantiated
15 allegations, the release of unsubstantiated
16 allegations would be a violation of FOIL?

17 MS. SAINT-FORT: Objection to
18 form.

19 You can answer.

20 THE WITNESS: I think our policy
21 was to state it was barred by 50-a.

22 BY MR. COLES:

23 Q Well, when you say you think,
24 what's your basis for that conclusion?

25 A Because the REO would issue a

1 LESA MOORE

2 decision whenever a third party asked for
3 records relating to a member of service's
4 disciplinary record, he would issue a decision
5 saying it's barred from a release by 50-a. On
6 appeal, the appeals officer would issue a
7 similar determination, it's barred by 50-a,
8 and when you got to the litigation stage, we
9 would defend the papers and say 50-a barred
10 the release of the records.

11 Q Anything to add to your answer?

12 A No.

13 Q Post repeal of 50-a, do you
14 believe police officers should be subject to
15 the same FOIL protections as other City
16 employees?

17 MS. SAINT-FORT: Objection.

18 That's outside the scope of this
19 deposition. Also asking for the opinion of
20 the deponent.

21 MR. COLES: Strike.

22 BY MR. COLES:

23 Q Post repeal of 50-a, is the police
24 department going to treat officers the same as
25 other City employees when it comes to applying

1 LESA MOORE

2 the protections and exclusions under FOIL?

3 MS. SAINT-FORT: Objection.

4 You can answer.

5 THE WITNESS: I think we're going

6 to apply the law that -- we're going to

7 look at the changed state in the law.

8 We're going to look -- and we're going to

9 make a determination about what we're going

10 to do.

11 BY MR. COLES:

12 Q Okay. Does the department have a

13 position as to whether or not officers should

14 be subject to the same protections in FOIL as

15 other City employees?

16 MS. SAINT-FORT: Objection.

17 You can answer.

18 THE WITNESS: I think we're going

19 to have to apply the law. The law -- the

20 Public Officers Law as it now stands has

21 exemptions that are very specific to law

22 enforcement. So I don't -- I cannot say

23 that we're going to apply it exactly the

24 same. I think we're just going to have to

25 apply the law.

1 LESA MOORE

2 BY MR. COLES:

3 Q Okay. I'm going to show you an
4 opinion on the Committee on Open Government
5 and then ask you the department's position on
6 some of the things said in that opinion.

7 MR. COLES: Evan, it's on Tab 14.
8 We'll mark this as Exhibit 1.

9 (Exhibit Number 1, Opinion of
10 the Committee on Open Government,
11 FOIL AO 19775, dated 7/27/20, was
12 marked for identification.)

13 MS. SAINT-FORT: Take your time to
14 read the entire opinion.

15 MR. COLES: We're marking as
16 Exhibit 1 a committee of the -- an opinion
17 of the Committee on Open Government, and
18 it's a -- can you -- it's FOIL AO 19775.

19 THE WITNESS: Can you please stop
20 moving it.

21 MR. COLES: And it's dated
22 July 27, 2020.

23 BY MR. COLES:

24 Q The question I'm going to have for
25 you is whether or not you've seen this before.

1 LESA MOORE

2 A (Reviewing document.)

3 Can you scroll up, please.

4 Further. Higher. Up to where the blue's at
5 the top.

6 No, no, not that blue. The first
7 blue on the first page, on one. Thanks.

8 (Reviewing document.)

9 Can you scroll up to the end.

10 Thank you.

11 (Reviewing document.)

12 Okay. I have seen it before.

13 Q You have seen it before?

14 A Yes.

15 Q Good.

16 MR. COLES: Just leave that page
17 up, please, Evan.

18 BY MR. COLES:

19 Q And on Exhibit 1, I'd like to
20 direct you to the last highlighted sentence,
21 which reads:

22 "In light of the repeal of
23 Section 50-a, a request for disciplinary
24 records relating to a police officer must be
25 reviewed in the same manner as a request for

1 LESA MOORE

2 disciplinary records of any other public
3 employee?"

4 Do you see that?

5 A Yes.

6 Q Is that the policy of the police
7 department?

8 MS. SAINT-FORT: Objection.

9 You can answer.

10 THE WITNESS: I have to refer back
11 to my previous answer. The Public Officers
12 Law has additional sections that apply
13 specifically to law enforcement records and
14 law enforcement officers. That is not
15 encapsulated for other employees.

16 I cannot say definitively the
17 department, not having made its final
18 determination, how 50-a's going to affect
19 the -- the repeal of 50-a is going to
20 affect our disclosure of records going
21 forward. I cannot say -- I cannot state --
22 make that statement. I can only say we
23 will -- we will apply the law and that we
24 have seen this advisory opinion.

25 ///

1 LESA MOORE

2 BY MR. COLES:

3 Q Okay. Do you know whether or not
4 the department intends to follow it?

5 MS. SAINT-FORT: Objection.

6 You can answer.

7 THE WITNESS: I think we are
8 considering that we can raise the privacy
9 objection -- the privacy exemption as an
10 objection, as it says in the advisory
11 opinion, to unsubstantiated disciplinary
12 complaints or investigations.

13 BY MR. COLES:

14 Q Okay. So if you go up the page a
15 little bit, there's a sentence that begins:

16 "The new provisions of FOIL did
17 not make changes to provisions concerning
18 personal privacy as defined in
19 Section 87(2)(b)?"

20 Do you see that?

21 A Yes.

22 Q And you agree with that, don't
23 you?

24 MS. SAINT-FORT: Objection.

25 You're asking for her personal opinion.

1 LESA MOORE

2 BY MR. COLES:

3 Q No, when I say "you," I mean the
4 police department as the 30(b)(6)
5 representative.

6 A I don't think that we would take
7 that same position because I believe 87(2)(b)
8 has been affected by the amendments that are
9 now in 89(2)(b).

10 Q Can you explain that, please.

11 A I believe when 50-a was repealed,
12 89(2)(b) had new sections put into it.

13 Q Okay. Does the police department
14 believe that the statement that the new
15 provisions of FOIL did not make changes to
16 provisions concerning personal privacy in
17 Section 87(2)(b) to be an accurate statement?

18 MS. SAINT-FORT: Objection.

19 You can answer.

20 THE WITNESS: Did you say
21 "accurate" or "inaccurate"?

22 BY MR. COLES:

23 Q "Accurate."

24 A I believe that we have reviewed
25 the advisory opinion. I -- in reviewing the

1 LESA MOORE

2 advisory opinion, I -- this section, I don't
3 believe that that line would be correct, in
4 light of the fact that 87(2)(b) directly
5 relates to 89(2)(b) and 89(2)(b) has been
6 amended.

7 I don't -- I don't think we've --
8 we have not taken a definitive position on
9 whether or not this line in this decision is
10 we agree with it.

11 Q When you refer to 89(2)(b), what
12 are you referring to?

13 A I believe that there were
14 amendments made to 89(2)(b) when they
15 amended -- it included things that -- I
16 believe that we're supposed to now redact as
17 privacy.

18 Q Okay. And do you think that
19 changed or does the department view that that
20 changed the provisions concerning personal
21 privacy in Section 87?

22 A I believe 87(2)(b) and 89(2)(b)
23 are intricately linked, and that it's the same
24 area of law. And that if there's a change in
25 89(2)(b), it necessarily reflects that it

1 LESA MOORE

2 requires 87(2)(b) to also have been amended in
3 effect.

4 Q In what way does the department
5 believe that the Section 87(2)(b) has been
6 amended, in effect, post repeal of 50-a?

7 MS. SAINT-FORT: Objection to
8 form.

9 You can answer.

10 THE WITNESS: By whatever changes
11 are now listed in 89(2)(b).

12 BY MR. COLES:

13 Q Anything else?

14 A Primarily by what is reflected in
15 89(2)(b).

16 Q Okay. Does the department have a
17 position as to whether or not the scope of the
18 personal privacy protection in 87(2)(b) is
19 made broader as a result of the changes in 89?

20 MS. SAINT-FORT: Objection to
21 form.

22 You can answer.

23 THE WITNESS: I think 89(2)(b) has
24 now made explicit things that we must
25 redact if we contemplate using a record.

1 LESA MOORE

2 BY MR. COLES:

3 Q So is it your view that if there
4 were any changes to Section 87(2)(b), those
5 changes would have expanded the scope of
6 personal privacy available to an officer in
7 connection with a FOIL request?

8 MS. SAINT-FORT: Objection to
9 form.

10 You can answer.

11 THE WITNESS: There have been
12 discussions about what will be apart from
13 the -- explicitly what is listed in
14 89(2)(b) to be extended. There's been
15 discussion about whether or not it enhances
16 or it's -- or it remains status quo.

17 BY MR. COLES:

18 Q If you look at the next sentence,
19 it says:

20 "Based on our longstanding
21 interpretation that requires an agency to
22 determine if an unsubstantiated or unfounded
23 complaint against an employee would, if
24 disclosed, constitute an unwarranted invasion
25 of personal privacy, and absent language

1 LESA MOORE
2 expressing that the legislature intended that
3 law enforcement disciplinary records should
4 enjoy less protection than the disciplinary
5 records of other government employees, we do
6 not impute such an attempt?"

7 Does the department agree with
8 that?

9 MS. SAINT-FORT: Objection to
10 form.

11 You can answer.

12 THE WITNESS: I think that the
13 department had not made a policy decision
14 on -- on that because we always relied on
15 50-a and that, therefore, as we go forward
16 making our decision, we have been made
17 aware of the advisory opinion. We have --
18 we are taking it into consideration, and
19 certainly whenever we -- there's a decision
20 on the stay and the injunction being sought
21 in this lawsuit, we will also be guided by
22 that or bound by it determining --
23 depending on the outcome, and so therefore
24 that will eventually -- all that will
25 eventually play into the ultimate decision

1 LESA MOORE

2 that we make.

3 BY MR. COLES:

4 Q Is that your complete answer?

5 A Yes.

6 Q Can you give a more specific
7 answer, or is that the best you can answer the
8 question?

9 A That's the best I can answer the
10 question. We have taken it into
11 consideration. We have been advised of the
12 advisory opinion, but we are also aware of the
13 ongoing litigation, and therefore -- and we
14 have not actually released any records. So
15 we've not actually made a final determination
16 on how we will be reacting to the repeal of
17 50-a, beyond saying that we will be taking
18 everything into consideration and that we have
19 looked at the advisory opinion and we've also
20 -- know that it does say that unsubstantiated
21 decisions of disciplinary matters regarding
22 persons who are protected by 50-a formerly,
23 that this is -- an option is to say personal
24 privacy.

25 Q Okay. Is there anything you want

1 LESA MOORE

2 to add to your answer?

3 A No.

4 Q What is the difference between an
5 unsubstantiated allegation and an unfounded
6 allegation?

7 MS. SAINT-FORT: I'm sorry. Are
8 we still using the exhibit?

9 MR. COLES: You can put the
10 exhibit down.

11 MS. SAINT-FORT: Okay. I'm also
12 going to object on the basis of being
13 outside the scope of this deposition and
14 instruct the witness not to answer.

15 MR. COLES: Well, let's have the
16 exhibit back.

17 Evan, please put Exhibit 1 back
18 up.

19 BY MR. COLES:

20 Q Okay. If you look to the section
21 we were just reading, based -- the paragraph
22 that begins "The new provisions," the second
23 sentence there says:

24 "Based on our longstanding
25 interpretation that requires an agency to

1 LESA MOORE

2 determine if an unsubstantiated or unfounded
3 complaint against an employee" --

4 Do you see that?

5 A Yes.

6 Q Do you have an -- does the
7 department have an understanding as to the
8 difference between an unsubstantiated and
9 unfounded complaint when it comes to FOIL?

10 MS. SAINT-FORT: I'm going to make
11 the same objections. Outside the scope of
12 this deposition and instruct the witness
13 not to answer.

14 MR. COLES: Okay. Again, I have
15 an ongoing objection to this. And you
16 understand we'll just bring the witness
17 back.

18 BY MR. COLES:

19 Q Does the department have a
20 position as to whether or not -- strike that.

21 Is -- what is a charge and
22 specification?

23 MS. SAINT-FORT: Objection.
24 Outside the scope of this deposition.

25 Instructing the witness not to

1 LESA MOORE

2 answer.

3 BY MR. COLES:

4 Q Does the department have a
5 position as to whether or not charges and
6 specifications would be producible under FOIL
7 or subject to the FOIL exemptions?

8 A So prior to the repeal of 50-a, we
9 would not have produced charges and a spec to
10 a third party asking. We would have asserted
11 50-a.

12 Q And today?

13 A We have not fulfilled any of the
14 request as yet. We have certainly
15 contemplated it being responsive.

16 Q How would you define a charge and
17 specification?

18 A I would define it as the
19 allegations brought against a member of
20 service by the department advocate's office
21 listing out all the specific misconduct that
22 is alleged that the person did and that will
23 be adjudicated before the office of the deputy
24 commissioner of trials.

25 Q Right. And would it be clear to

1 LESA MOORE

2 say -- would it be accurate to say that
3 charges and specifications are not proven?

4 MS. SAINT-FORT: Objection.

5 You can answer.

6 THE WITNESS: It would -- yes. It
7 would be accurate to say it's alleged.

8 BY MR. COLES:

9 Q Okay.

10 MS. SAINT-FORT: Are we still
11 using this exhibit?

12 MR. COLES: Yes. Just leave it up
13 for a second.

14 MS. SAINT-FORT: Okay.

15 BY MR. COLES:

16 Q Does the department have a
17 position as to whether or not unproven or
18 pending allegations against officers are
19 protected as unreasonable invasions of privacy
20 under FOIL?

21 MS. SAINT-FORT: Objection.

22 You can answer.

23 THE WITNESS: Could you reread the
24 question, please?

25 CERTIFIED STENOGRAPHER: Do you

1 LESA MOORE

2 want me to read the question back?

3 MR. COLES: Yes, please.

4 (Previous question read back.)

5 THE WITNESS: So prior to the
6 institution of this lawsuit, we had placed
7 them on the -- I believe it was a link on
8 the department's trial calendar page, and
9 then with the institution of this lawsuit,
10 it went back to being a decision where
11 there is no final decision because we are
12 awaiting the outcome of this lawsuit to
13 make a determination as to what will happen
14 with charges and specifications that are --
15 that are just at the allegation stage.

16 BY MR. COLES:

17 Q That was my question. What is the
18 department's position as to whether or not
19 mere allegations that are not proven, if
20 released to the public, would constitute an
21 unreasonable invasion of privacy?

22 MS. SAINT-FORT: Objection to
23 form.

24 You can answer.

25 THE WITNESS: I'm saying that

1 LESA MOORE

2 right now there is no position because we
3 are awaiting making a final determination
4 in part based on the outcome of this
5 lawsuit, but that prior to it we had posted
6 them on the trial calendar's page so that a
7 decision had previously been made to post
8 them on -- as -- I believe it was links on
9 the trial calendar's page.

10 BY MR. COLES:

11 Q And when did that posting first
12 take place?

13 A In -- sometime in June of 2020.

14 Q It took place post the repeal of
15 50-a, correct?

16 A Yes.

17 Q What kind of determination was
18 made as to whether or not the posting of those
19 trial calendars was protected under FOIL?

20 MS. SAINT-FORT: Objection. Form.

21 You can answer.

22 THE WITNESS: I -- I mean, that
23 would not have been a FOIL decision because
24 we have not answered any of our FOIL or
25 pending post 50-a disciplinary requests.

1 LESA MOORE

2 BY MR. COLES:

3 Q Right.

4 A So it wouldn't have had nothing to
5 do with FOIL.

6 Q Do you know whether or not a
7 determination was made as to whether or not
8 the posting of those calendars would be an
9 unreasonable invasion of privacy of the
10 subject officers?

11 MS. SAINT-FORT: Objection to
12 form.

13 You can answer.

14 THE WITNESS: I don't know.

15 BY MR. COLES:

16 Q You don't know whether or not the
17 department made that determination or not?

18 A I don't know.

19 MR. COLES: All right. I'd like
20 to mark as Exhibit 2 the -- our Tab 1,
21 Evan. It's a letter dated June 29th, 2020,
22 from the Police Benevolent Association to
23 Ernest Hart, and it attaches a letter from
24 the Police Benevolent Association, also
25 June 29th, 2020, to Dermot Shea.

1 LESA MOORE

2 (Exhibit Number 2, Letter from
3 Patrick J. Lynch, President of the
4 Police Benevolent Association, to
5 Dermot Shea, dated 6/29/20; Letter
6 from Michael T. Murray, Police
7 Benevolent Association, to Ernest
8 Hart, dated 6/29/20, was marked for
9 identification.)

10 BY MR. COLES:

11 Q Have you seen Exhibit 2 before,
12 ma'am?

13 A I'm just going to read it.

14 (Reviewing document.)

15 Could you scroll up, please.

16 Q The only question is have you seen
17 it before?

18 MS. SAINT-FORT: Just allow the
19 witness to read the document.

20 THE WITNESS: (Reviewing
21 document.)

22 Is that the entire document?

23 BY MR. COLES:

24 Q No. I just want to know whether
25 or not you've seen the first page of

1 LESA MOORE

2 Exhibit 2.

3 A Is this the entire document,
4 though?

5 Q No. There's an attachment to it,
6 but I'm only interested right now on the first
7 page.

8 A Based on the first page, I can't
9 recall. The first line looks familiar. The
10 document I read was very long. I -- I don't
11 recall this first page in particular.

12 Q Okay. In determining whether or
13 not the release of information about police
14 disciplinary records would create a risk of
15 safety, does the department consider at all
16 the fact that officers WenJian Liu and Rafael
17 Ramos were assassinated in 2014?

18 MS. SAINT-FORT: Objection. Form.
19 You can answer.

20 THE WITNESS: I don't know.

21 BY MR. COLES:

22 Q Do you know whether or not in
23 determining whether or not the release of
24 disciplinary records would constitute a risk
25 of safety if the department considers the fact

1 LESA MOORE

2 that Police Officer Miosotis Familia was
3 assassinated in 2017?

4 MS. SAINT-FORT: Objection to
5 form.

6 You can answer.

7 THE WITNESS: I don't know.

8 BY MR. COLES:

9 Q Do you know whether or not the
10 department takes into account the fact that in
11 2018 the Department of Justice arrested a man
12 for using a weapon of mass destruction whose
13 intent was to kill police officers?

14 MS. SAINT-FORT: Objection to
15 form.

16 You can answer.

17 THE WITNESS: I don't think I
18 understood the question. Could you read
19 back the question, please?

20 BY MR. COLES:

21 Q I'll make it more specific.

22 Are you aware that the department,
23 according to the Department of Justice, in
24 2018, a man attempted to send a mail bomb to
25 the New York City police officers who arrested

1 LESA MOORE

2 him?

3 MS. SAINT-FORT: Objection.

4 Outside the scope of this deposition.

5 BY MR. COLES:

6 Q Are you familiar with that?

7 MS. SAINT-FORT: Same objection.

8 I'm instructing the witness not to
9 answer.

10 BY MR. COLES:

11 Q My question is whether or not --
12 if she's familiar with that, whether or not
13 the department takes that into account in
14 evaluating the safety exemption in FOIL.

15 MS. SAINT-FORT: Okay.

16 You can answer that question.

17 Objection to form.

18 But you can answer.

19 THE WITNESS: I don't know.

20 BY MR. COLES:

21 Q Here's the 30(b)(6) witness, and
22 yet you can't testify as to whether or not the
23 department takes into account killings or
24 attempted killings of police officers in
25 making a determination as to whether or not to

1 LESA MOORE
2 publicly release certain disciplinary records?
3 Is that your testimony?

4 MS. SAINT-FORT: Objection to
5 form.

6 You can answer.

7 THE WITNESS: What I'm saying is,
8 I don't know if in all the discussions
9 we've had that those have been specifically
10 raised as -- as, like, specifically these
11 three -- these three incidents were raised.

12 BY MR. COLES:

13 Q Are you aware of other incidents
14 involving attacks on police officers that have
15 been raised in discussions about whether or
16 not the privacy exemption should apply to
17 disciplinary records post the repeal of 50-a?

18 MS. SAINT-FORT: Objection to
19 form.

20 You can answer.

21 THE WITNESS: I'm not aware of
22 specific incidents being raised. What I am
23 aware of is that one of the making or
24 determination one of the considerations
25 will be in making a determination whether

1 LESA MOORE

2 or not life and safety should be a concern
3 that we should be -- that we should take
4 into -- in place -- take into consideration
5 when looking at the document that is
6 disclosable but that we have to review for
7 exemptions, that life and safety is one of
8 the grounds that we will contemplate.

9 But as to, like, specifically
10 these incidents or a specific incident, I'm
11 not aware of that being discussed.

12 BY MR. COLES:

13 Q Does the department have a
14 position as to whether or not the release of
15 unsubstantiated or unfounded allegations would
16 unfairly stigmatize the officer?

17 MS. SAINT-FORT: Objection to
18 form.

19 You can answer.

20 THE WITNESS: I don't think we
21 have a final position. I think it's
22 something that we have -- in discussions
23 there's been consideration about what --
24 the information that we release, what
25 future impact it will have upon the person

1 LESA MOORE

2 whose information is being released.

3 BY MR. COLES:

4 Q You would have a concern about
5 that, correct?

6 MS. SAINT-FORT: Objection to
7 form.

8 You can answer.

9 THE WITNESS: We have -- in our
10 discussions -- in discussions I
11 participated in, one issue that we have
12 discussed is what will be the impact once
13 we -- if we release -- if we decide to
14 release certain records, what will be the
15 impact on the person in the future.

16 BY MR. COLES:

17 Q Okay. And how have you gone --
18 gone about trying to determine what the impact
19 would be?

20 MS. SAINT-FORT: Objection.

21 And I would instruct the witness
22 not to answer anything as privileged
23 information.

24 BY MR. COLES:

25 Q You can answer the question.

1 LESA MOORE

2 MS. SAINT-FORT: You can answer
3 without revealing anything that is
4 privileged information, to the extent you
5 can answer.

6 THE WITNESS: I mean, to the
7 extent I can answer that, we have
8 contemplated certain consequences that
9 might flow to somebody by our release of
10 records.

11 BY MR. COLES:

12 Q What kind of consequences?

13 MS. SAINT-FORT: Same objection.
14 You can answer to the extent
15 you're not revealing any privileged
16 information.

17 THE WITNESS: Well, certainly we
18 have -- we've thought about whether or not
19 there will be post employment consequences
20 based on records that we could release.

21 BY MR. COLES:

22 Q Okay.

23 MS. SAINT-FORT: I just want to
24 note that we've reached our 90-minute time
25 frame, from my stopwatch.

1 LESA MOORE

2 MR. COLES: Okay. Ms. Moore,
3 thank you for your testimony today. I'm
4 going to close the deposition because we're
5 at the 90-minute time frame, but as you
6 know, there were issues that I had with
7 your counsel on the interposition of
8 certain objections, and so it may be
9 necessary to call you back in your capacity
10 as a 30(b)(6) witness, and I reserve my
11 right to do that. But thank you for your
12 time today.

13 THE WITNESS: Okay.

14 So I'm going to leave the chat
15 now. Okay?

16 THE VIDEOGRAPHER: This concludes
17 today's deposition of Lesa Moore. The
18 total media used was one.

19 Going off record at 2:37 p.m.
20 Eastern Standard Time.

21 (Concluded at 2:37 p.m.)
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LESA MOORE

Subscribed and sworn to before me
this ____ day of _____, 2020.

(Notary Public)

My Commission
expires: _____

CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF POLK

I, the undersigned authority, certify
that LESA MOORE remotely appeared before me
and was duly sworn.

WITNESS my hand and official seal this
6th day of August, 2020.

Rhonda Hall-Breuwet, RDR, CRR, LCR, CCR, FPR
Notary Public - State of Florida
My Commission Expires: 9/28/23
Commission No. GG 360849

C E R T I F I C A T E

STATE OF FLORIDA:

I, RHONDA HALL-BREUWET, RDR, CRR, LCR,
CCR, FPR, stenographic shorthand reporter, do
hereby certify:

That the witness whose deposition is
hereinbefore set forth was duly sworn, and
that such deposition is a true record of the
testimony given by such witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 6th day of August, 2020.

RHONDA HALL-BREUWET, RDR, CRR, LCR, CCR, FPR
Stenographic Shorthand Reporter

ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: UNIFORMED FIRE OFFICERS
ASSOCIATION, et al. V. BILL de BLASIO, et al.

Dep. Date: August 6, 2020

Deponent: LESA MOORE

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reason
6	_____	_____	_____	_____
7	_____	_____	_____	_____
8	_____	_____	_____	_____
9	_____	_____	_____	_____
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15	_____	_____	_____	_____
16	_____	_____	_____	_____

Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS _____ DAY OF _____, 2020

(Notary Public) MY COMMISSION EXPIRES: _____

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ability 10:6 able 55:6 absent 72:25 access 13:13,16 14:7 19:7,17,19 21:3,5,9 22:6 53:12 account 45:13,21 45:22 84:10 85:13 85:23 accurate 69:17,21 69:23 78:2,7 acknowledged 9:4 48:6 action 36:12 93:12 actual 43:9,12,24 43:25 add 30:10 41:17 63:11 75:2 addition 17:4 additional 42:12 67:12 address 23:7 24:8,9 60:12 addressed 44:13,13 51:12 58:17 addresses 31:5 adjudicated 77:23 admin 17:23 advised 74:11 advisory 51:5,7,11 51:15,24 53:5,13 54:2,14,15 56:7,9 57:10,13 60:14 67:24 68:10 69:25 70:2 73:17 74:12 74:19 advocate's 77:20 affect 67:18,20 affirmative 60:9 afternoon 7:2,25 8:5 9:9 agency 11:18 12:8 12:10 22:7 72:21 75:25 agree 56:7,8 68:22	70:10 73:7 agreement 35:17 agreements 36:11 37:4,11,20 39:14 41:23 agrees 52:6 57:14 ahead 16:13 32:8 38:17 al 1:5,8 7:8,9 94:2,2 allegation 75:5,6 79:15 allegations 55:13 56:10,11 57:3 58:6 59:16 60:23 61:18 62:15,16 77:19 78:18 79:19 87:15 alleged 77:22 78:7 allow 82:18 Alvarez 4:17 7:19 amended 70:6,15 71:2,6 amendments 69:8 70:14 Americas 3:6 analyze 23:8 annual 54:10 answer 10:5 11:2 11:12 15:2 16:12 20:18 21:20 23:12 25:21 26:17 27:11 28:12 29:4,15,19 30:11 31:23 33:12 34:18 36:17,20 37:15 38:6,25 39:5,22 40:16,25 41:10,17 43:6 45:10 46:3,23 47:14,16 48:3 49:7 50:8,10,21 52:4,23 53:8,19 54:20 55:4,19 56:14 57:7,16 58:10 59:11,22,25 60:5 61:21 62:19 63:11 64:4,17 67:9,11 68:6	69:19 71:9,22 72:10 73:11 74:4 74:7,7,9 75:2,14 76:13 77:2 78:5 78:22 79:24 80:21 81:13 83:19 84:6 84:16 85:9,16,18 86:6,20 87:19 88:8,22,25 89:2,5 89:7,14 answered 25:20 30:8 40:23 41:3 60:7 80:24 answering 26:3 ANTHONY 3:9 anthony.coles@d... 3:11 anybody 45:3 anyone's 26:21 AO 6:5 65:11,18 apart 72:12 appeal 63:6 appeals 58:14 63:6 appeared 92:7 application 44:8 54:25 applied 31:4 37:23 38:10 51:19 applies 23:9 28:8 34:4,10 38:21 46:9 51:10 apply 14:17 26:9 27:16 28:3 29:6 29:17,21 30:4,17 30:22 31:19,20 35:13 36:3 38:4 40:14 41:14 47:4 48:12,21 51:2,20 64:6,19,23,25 67:12,23 86:16 applying 63:25 appropriate 25:6,7 area 52:7 70:24 arrested 84:11,25 asked 25:19 58:3 63:2 asking 10:3 21:23	23:14 40:17 41:5 46:11 55:17 61:14 63:19 68:25 77:10 assassinated 83:17 84:3 assert 35:18 asserted 35:19 77:10 assign 11:21 17:2 assigned 20:3,20 22:25 23:23 27:13 27:14,14 32:2 42:13 44:23,24 assistant 12:9 Association 1:5 6:8 6:10 7:8 81:22,24 82:4,7 94:2 attaches 81:23 attachment 83:5 attacks 86:14 attempt 73:6 attempted 84:24 85:24 attend 20:23 43:16 attended 9:23 attending 7:15 attorney 7:23 11:17,18 12:8,10 attorneys 3:3 4:1 11:21 13:2,6 44:23 attorney-client 10:16 August 1:17 2:4 7:4 92:11 93:16 94:3 authority 54:25 55:9 92:6 available 72:6 Avenue 3:6 awaiting 79:12 80:3 awards 34:24 aware 17:9,21,21 19:13 21:6 22:25 23:6 39:9,11,16 49:19 50:13,17 52:17,24 53:9	55:11 57:7,19 73:17 74:12 84:22 86:13,21,23 87:11 <hr/> B B 6:1 back 33:16,17 50:2 50:4 67:10 75:16 75:17 76:17 79:2 79:4,10 84:19 90:9 bar 56:23 bargaining 34:13 34:24 35:4,9,16 36:5,11 37:4,11 37:20,23 38:3,22 39:14,19 40:9,20 41:8 barred 61:23 62:21 63:5,7,9 bars 61:7 based 28:14 49:3 55:24 61:11 72:20 75:21,24 80:4 83:8 89:20 basis 47:23 48:13 48:22 54:5,8 59:7 59:9 62:24 75:12 beginning 7:22 begins 68:15 75:22 behalf 10:20 believe 12:8,25 15:20 16:4 17:5 17:12,14,22 18:2 18:14 32:17 40:8 40:12,13 41:13 42:17,18 43:7,23 43:23 44:6,11,17 45:16 63:14 69:7 69:11,14,24 70:3 70:13,16,22 71:5 79:7 80:8 Benevolent 6:7,10 81:22,24 82:4,7 best 10:5 18:5 74:7 74:9 beyond 19:11

74:17 Bill 1:8 7:9 94:2 birth 24:10 bit 42:7 68:15 blanket 36:21 Blasio 1:8 7:9 94:2 blood 93:12 blue 66:6,7 blue's 66:4 bomb 84:24 bound 73:22 break 10:13,15 bring 76:16 broad 49:18,23 broader 71:19 brought 77:19 bureau 44:23 45:4	change 55:25 60:8 70:24 changed 64:7 70:19 70:20 changes 43:12 68:17 69:15 71:10 71:19 72:4,5 charge 76:21 77:16 charges 77:5,9 78:3 79:14 chart 13:20 chat 90:14 chief 15:8,11,17,23 Church 4:4 circumstances 33:5 City 4:3 8:7 10:20 39:14,17,23 45:21 47:3 48:11,17 57:4 63:15,25 64:15 84:25 City's 15:8,11 civil 11:18 12:13,15 13:10 claim 23:4 24:4 31:10 claiming 24:12 clarify 35:6 48:16 clear 10:9,9 18:4 44:19 48:20 77:25 clearly 49:23 close 90:4 Coles 3:9 5:4 7:24 7:24 9:8 11:5,14 13:4 15:6 16:17 20:24 21:24 23:15 25:8,10 26:2,10 26:23 27:17 28:16 29:10,18 30:9 32:7 33:15,19 34:20 35:11 36:18 36:24 37:18 38:11 38:19 39:3 40:3 40:15,24 41:4 43:15,20 45:11 46:10 47:6,21 48:9,19 49:10,16 49:25 50:7,12,23	52:12 53:2,10 54:3,22 55:7,18 55:21 56:24 57:12 57:24 58:18 59:4 59:12,21,24 60:2 60:20 62:11,22 63:21,22 64:11 65:2,7,15,21,23 66:16,18 68:2,13 69:2,22 71:12 72:2,17 74:3 75:9 75:15,19 76:14,18 77:3 78:8,12,15 79:3,16 80:10 81:2,15,19 82:10 82:23 83:21 84:8 84:20 85:5,10,20 86:12 87:12 88:3 88:16,24 89:11,21 90:2 collective 34:13,24 35:4,9,16 36:5,11 37:4,10,20,23 38:3,21 39:13,18 40:9,20 41:8 come 24:16 comes 26:25 63:25 76:9 coming 60:17 Commission 91:16 92:18,19 94:24 commissioner 77:24 committee 6:4 49:5 49:12 50:13,18,25 51:12,16,22 52:14 52:19 53:5,13,25 54:24 55:12 56:9 56:25 58:4 65:4 65:10,16,17 committee's 51:24 common 24:17 44:10,13 communication 10:9 complaint 72:23 76:3,9	complaints 68:12 complete 56:23 74:4 concern 87:2 88:4 concerning 68:17 69:16 70:20 Concluded 90:21 concludes 90:16 conclusion 62:24 conducted 42:14 conference 7:20 confidential 18:17 19:2 connect 49:21 connection 26:14 72:7 Conroy 42:15 44:21 consequences 89:8 89:12,19 consider 24:14 37:2 38:9 46:8 83:15 consideration 31:25 32:10 45:17 52:9 57:21,23 58:2 60:14 73:18 74:11,18 87:4,23 considerations 86:24 considered 32:18 38:2 considering 68:8 considers 83:25 consistent 51:20,21 constitute 22:12,17 28:9 55:14 72:24 79:20 83:24 constitutes 58:6 constitutional 45:15,24 46:5,14 47:2,8,17 consultation 14:19 contains 24:2 contemplate 71:25 87:8 contemplated	77:15 89:8 context 23:20 55:17 continued 3:25 59:8 contract 34:24 35:15,20,21 36:8 Corporation 8:8 correct 33:23 35:21 48:17,24 54:17 70:3 80:15 88:5 CORRECTIONS 94:4 counsel 7:20 8:8,13 9:25 12:9 90:7 COUNTY 92:4 court 1:1 2:11,12 7:10 8:14,16 11:24 17:3 33:15 cover 37:5,11 COVID-19 7:16 create 28:25 30:18 32:15 33:21 83:14 created 15:18 creating 56:2 60:11 CRR 1:24 92:16 93:4,19 current 11:15 53:12 currently 55:24 56:2
<hr/> C <hr/> C 3:1 93:1,1 calendar 79:8 calendars 80:19 81:8 calendar's 80:6,9 call 90:9 capacity 13:25 90:9 case 7:11 11:23 51:19,20,21 52:6 52:7,8 94:2 cases 14:5 17:3,7 37:17 case-by-case 48:22 49:2 CCR 1:24 92:16 93:5,19 certain 21:16,17 30:24 35:23 45:14 45:23 86:2 88:14 89:8 90:8 certainly 57:20 73:19 77:14 89:17 CERTIFICATE 92:1 Certified 2:10,12 8:18,25 78:25 certify 92:6 93:6,11 challenged 14:6				<hr/> D <hr/> D 5:1 date 7:3 24:10 94:3 dated 6:5,8,10 65:11,21 81:21 82:5,8 David 13:9 day 91:11 92:11 93:16 94:21 DC 3:15 de 1:8 7:9 94:2 deals 45:18 decide 88:13 deciding 32:25 decision 32:21 46:6

51:13,19,21 52:11 56:4,5 58:14,22 61:6,11,25 62:2,7 63:2,4 70:9 73:13 73:16,19,25 79:10 79:11 80:7,23 decisions 37:24 74:21 defend 17:3 63:9 DEFENDANT 4:1 defendants 1:9 8:9 8:11 defended 9:22 deference 51:14,24 define 77:16,18 defined 68:18 definitely 36:9 definitive 70:8 definitively 67:16 deliberative 59:10 Dep 94:3 department 4:3 8:7 12:5 13:15 15:21 16:20 17:10 18:7 18:12 19:8 21:15 22:16,20,21 23:17 24:20 25:11,17 26:5,12 27:7,12 28:8 29:11,24 30:16 34:2,8 37:2 38:13,21 39:12,24 40:8,19 41:7,22 44:2,7 45:22 46:12 47:9,22 48:21 50:24 51:23 52:18 53:4 54:8 55:23 56:8 57:14 59:2 61:15 62:13 63:24 64:12 67:7 67:17 68:4 69:4 69:13 70:19 71:4 71:16 73:7,13 76:7,19 77:4,20 78:16 81:17 83:15 83:25 84:10,11,22 84:23 85:13,23 87:13	department's 13:13 58:4 59:14 60:22 61:16 65:5 79:8,18 depending 73:23 deponent 63:20 94:3,19 deposed 9:13,17,19 deposition 1:15 2:8 7:6,13 9:16 24:25 34:15 35:10 36:15 45:9 49:20,22,24 50:11 63:19 75:13 76:12,24 85:4 90:4,17 93:7,9 depositions 9:20,22 deputy 77:23 Dermot 6:8 81:25 82:5 describe 16:22 24:7 DESCRIPTION 6:3 descriptions 53:22 53:23 destruction 84:12 details 61:9 determination 32:13 33:6,23 34:3,9 46:13 49:3 51:9 59:20 60:10 63:7 64:9 67:18 74:15 79:13 80:3 80:17 81:7,17 85:25 86:24,25 determine 22:16 27:23 28:18 31:7 31:9 32:11 38:20 72:22 76:2 88:18 determining 23:17 28:8 30:17,23 31:13 33:20 47:10 57:18 73:22 83:12 83:23 difference 75:4 76:8 different 31:12,18 38:8 56:7	Diplomate 2:10 direct 5:4 9:7 14:2 66:20 directed 30:6 direction 14:3,16 directions 15:20,23 16:4 directives 16:3 directly 26:4 70:4 director 13:10 42:18 disagreed 52:18 53:4 disciplinary 47:24 52:20 60:16 61:5 61:10,12 63:4 66:23 67:2 68:11 73:3,4 74:21 80:25 83:14,24 86:2,17 disclosable 87:6 disclosed 22:11 34:23 72:24 disclosure 36:4 67:20 discretion 14:17 discussed 42:22 87:11 88:12 discussion 42:3 59:9 72:15 discussions 42:2 72:12 86:8,15 87:22 88:10,10 District 1:1,2 7:10 7:10 DLA 3:5 4:14 8:3,4 document 7:19 32:11 44:9 45:14 66:2,8,11 82:14 82:19,21,22 83:3 83:10 87:5 documents 11:23 22:17 23:18,24 27:24 28:19,24 37:3,12 43:2 45:23 47:11 Dominique 4:7 8:6	dosaint@law.nyc... 4:9 due 7:15 45:6 duly 9:4 92:8 93:8 <hr/> E <hr/> E 3:1,1 5:1 6:1 93:1 93:1 Eastern 7:5 90:20 effect 71:3,6 effort 37:10 eight 13:2,5 Eighth 3:14 email 3:11,18 4:9 24:9 employee 57:4 67:3 72:23 76:3 employees 63:16 63:25 64:15 67:15 73:5 employment 89:19 encapsulated 46:18 47:20 67:15 enforcement 46:20 64:22 67:13,14 73:3 enhances 72:15 enjoy 73:4 ensuring 11:23 entered 39:15 41:24 entire 12:13 18:19 65:14 82:22 83:3 entitled 61:13 Ernest 6:10 81:23 82:7 ERRATA 94:1 ESQUIRE 3:9,10 3:17 4:7,8 essentially 11:19 et 1:5,8 7:8,9 94:2,2 evaluating 21:16 85:14 Evan 3:17 8:3 65:7 66:17 75:17 81:21 evan.north@dla... 3:18	eventually 73:24 73:25 everybody 7:25 20:3 exactly 23:24 53:21 64:23 EXAMINATION 5:4 9:7 examples 52:18 exclusions 64:2 Excuse 9:18 exemption 22:11 23:5,8,9 28:3 29:8 31:3,14,15 34:4 34:10 35:8,13,18 38:3,22 46:8,18 51:10,18 68:9 85:14 86:16 exemptions 27:16 28:3,22 29:6 30:21 31:17 38:8 44:10,14 48:8,12 48:22 64:21 77:7 87:7 exhibit 4:16 6:4,6 65:8,9,16 66:19 75:8,10,16,17 78:11 81:20 82:2 82:11 83:2 exist 23:25 expand 42:6 expanded 72:5 expires 91:17 92:18 94:24 explain 52:13 69:10 explicit 71:24 explicitly 72:13 expressing 73:2 extended 72:14 extent 52:5 56:14 89:4,7,14 <hr/> F <hr/> F 4:7 93:1 fact 70:4 83:16,25 84:10
---	---	--	---	--

factors 23:16 28:7 30:17 31:12,19 36:2 fair 11:9 20:11 26:11 33:25 34:6 45:19 46:17 47:19 fall 13:20 Familia 84:2 familiar 15:16 21:25 22:5,9,13 34:21 37:10 49:4 49:8 83:9 85:6,12 far 48:4,5 feel 24:19,20 25:16 feeling 25:9 feelings 25:5 filed 7:9 11:23 file-by-file 28:14 28:18,23 33:22 47:23 final 57:21 67:17 74:15 79:11 80:3 87:21 finalized 35:18 fine 10:14 finish 46:23 Fire 1:5 7:8 94:2 firm 8:2 first 9:15 16:6,15 66:6,7 80:11 82:25 83:6,8,9,11 five 14:21,22 Florida 2:13,14 92:3,17 93:2 flow 89:9 fluctuated 12:25 FOIL 6:5 11:3,8,19 12:21 13:7,23 14:11 15:19,21 16:3,19 17:6,11 17:24,25 18:8 19:10,10,12,16,24 20:2,4 22:11,19 22:23 23:20,23 24:22 25:3,13,15 26:14 27:3,8,19 27:20,22 29:13	30:2,16,22 32:18 32:19 33:21 34:2 34:7,22 35:8 36:4 36:25 37:9,22 39:12,20,25 40:10 40:21 41:9,22,24 42:11,13,13 43:3 44:11,14,24 45:12 45:16 47:3,3,11 48:22 49:21 50:14 50:19 51:3 52:2 53:12 55:2,6,17 59:5,17 60:25 61:13 62:16 63:15 64:2,14 65:11,18 68:16 69:15 72:7 76:9 77:6,7 78:20 80:19,23,24 81:5 85:14 FOILs 22:22 48:23 FOIL-related 16:8 follow 17:13,17 40:2,5 68:4 following 44:8 follows 9:6 55:23 58:4 footnotes 18:25 form 10:25 11:11 12:23 14:6,25 16:11 20:16 21:19 23:11 24:24 26:16 31:22 33:11 37:14 43:5 46:2 47:13 62:18 71:8,21 72:9 73:10 79:23 80:20 81:12 83:18 84:5,15 85:17 86:5,19 87:18 88:7 formal 62:6 formerly 74:22 formulating 42:9 57:21 forth 93:8 forward 67:21 73:15 FPR 1:24 92:16	93:5,19 frame 89:25 90:5 Freedom 22:2,2 frequently 30:22 31:4 fulfilled 77:13 further 49:8 66:4 93:11 future 87:25 88:15	ground 10:3 grounds 87:8 group 12:11 13:18 13:21 16:7,16 guess 20:25 guidance 52:14,16 54:16 55:6 guidances 15:17 guide 17:22,23 18:14,20,22,24 19:4 guided 73:21 guidelines 17:13,20 18:6,12 guides 18:16	36:5 impact 87:25 88:12 88:15,18 impair 34:23 36:4 important 10:8 33:8 impute 73:6 inaccurate 69:21 incident 87:10 incidents 86:11,13 86:22 87:10 include 46:25 included 16:4 44:9 70:15 including 28:4 29:8 60:13 inconsistent 37:3 individualized 47:23 individually 27:22 information 22:2 23:2,25 24:3,6,11 24:14 28:7 31:6,9 32:4,10,22 51:2 56:16 57:11 83:13 87:24 88:2,23 89:4,16 injunction 73:20 instance 53:3 institution 79:6,9 instruct 75:14 76:12 88:21 instructing 36:16 50:9 59:11 76:25 85:8 instruction 36:19 intake 11:21 intended 73:2 intends 68:4 intent 84:13 interested 83:6 93:14 interfere 46:21 interference 45:18 46:8,18 interposition 90:7 interpretation
---	--	--	--	---

72:21 75:25 intricately 70:23 invasion 22:12,18 23:19 26:13 27:24 28:10 55:14 56:12 57:5 58:7 59:17 60:24 61:19 62:3 72:24 79:21 81:9 invasions 78:19 investigations 68:12 investigator 46:7 invited 42:21 involving 86:14 issue 10:17 37:17 62:25 63:4,6 88:11 issued 15:21,23 16:5 18:7 51:15 53:13 58:12,13,21 issues 90:6	38:15,18 39:16 41:21 42:19 43:2 43:9,14 45:20 46:4,5,12,17 52:9 53:11,15 54:4,6,7 54:9,11 59:13 68:3 74:20 81:6 81:14,16,18 82:24 83:20,22 84:7,9 85:19 86:8 90:6 knowledge 18:5 KPF 1:3 KWL 1:3	20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1,18 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1,17 91:7 92:7 94:3 letter 6:6,9 81:21 81:23 82:2,5 let's 49:25 75:15 Licensed 2:11 life 29:9 31:3,7,10 31:24 32:6 87:2,7 light 66:22 70:4 line 70:3,9 83:9 lines 18:15 link 79:7 linked 70:23 links 80:8 list 24:16,16,17 listed 23:2 24:9 32:10 35:14 71:11 72:13 listing 77:21 litigation 11:20 12:21 13:7 14:2,5 17:2 19:10 20:21 20:22 63:8 74:13 little 42:7 56:6	68:15 Liu 83:16 LLP 3:5 Ln 94:5 locate 31:6 location 32:3 long 11:25 19:13 24:15,17 55:12 83:10 longstanding 72:20 75:24 look 23:23,25 27:22 31:8 33:3,4 50:25 54:13,15 64:7,8 72:18 75:20 looked 74:19 looking 28:2 47:4 87:5 looks 23:17 34:2 47:9 83:9 Lynch 6:7 82:3	MATYSTIK 4:14 ma'am 34:21 44:20 46:23 48:21 82:12 mean 14:5 16:15 19:16 22:19,20 24:5 25:8 27:3 32:20 48:16 69:3 80:22 89:6 media 90:18 member 61:4,5 62:9 63:3 77:19 memo 44:6 mere 79:19 mesh 52:6 Michael 3:10 6:9 82:6 michael.hepwort... 3:12 middle 10:15 mind 31:13 Miosotis 84:2 misconduct 55:13 77:21 months 12:19 Moore 1:16 2:8 7:1 7:7 8:1 9:1,3,9 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1,5 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1
J J 6:6 82:3 James 42:15 Jeremy 4:20 7:17 Jim 42:22 44:17 job 1:25 53:16,22 joined 20:12 judicial 46:24 July 65:22 June 80:13 81:21 81:25 Justice 84:11,23	L LA 2:12 language 72:25 law 4:3 8:7 12:18 15:21 17:18 22:3 22:6 23:4 26:9 29:17,22 30:4,21 31:3 34:22 40:2,5 40:7,14 41:15 42:13 43:7,8,10 43:11,13,24,25 44:7,8,10 45:17 46:9,19,20 47:20 51:19,20,21 52:7 52:7,8 64:6,7,19 64:19,20,21,25 67:12,13,14,23 70:24 73:3 lawsuit 73:21 79:6 79:9,12 80:5 LCR 1:24 92:16 93:4,19 leave 66:16 78:12 90:14 legal 44:23 45:4 legislature 73:2 LeMASTER 4:20 7:17 Lesa 1:16 2:8 7:1,7 8:1 9:1,3 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1	M mail 84:24 making 32:21 33:5 46:6 49:2 60:6 73:16 80:3 85:25 86:23,25 man 84:11,24 manage 11:19 managing 11:17 manner 66:25 Mantellini 14:16 Mantellino 13:17 14:3 21:3 Mantellino's 19:18 mark 65:8 81:20 marked 65:12 82:8 marking 65:15 marriage 93:13 mass 84:12 materials 43:14,22 44:2 MATT 4:14 matter 7:7 93:14 matters 16:8 60:16 74:21		
K kill 84:13 killings 85:23,24 kind 51:14 80:17 89:12 knew 20:10 know 10:7 15:11 16:2 17:17 18:6 18:11 19:3,6,9,22 20:21 21:2,10 26:3 31:2,4 33:5 35:23,23 36:6,7,8 37:7,19,21,21,22				

73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1,2 90:17 91:7 92:7 94:3 moving 65:20 Murray 6:9 82:6	28:11 29:3,14 31:21 33:10 34:14 35:5 36:13,21 37:13 38:5,14,24 39:21 40:11,22 43:4 45:8,25 47:5 47:12 48:2 49:6,8 49:14 50:5,20 52:3,22 53:7,18 54:18 55:3,16 56:13 57:6,15 58:8 59:3 61:20 62:17 63:17 64:3 64:16 67:8 68:5,9 68:10,24 69:18 71:7,20 72:8 73:9 76:15,23 78:4,21 79:22 80:20 81:11 83:18 84:4,14 85:3,7,17 86:4,18 87:17 88:6,20 89:13 objections 76:11 90:8 obviously 33:7 occasion 14:10 occasions 14:13,21 occurred 20:10 office 8:7,10 77:20 77:23 officer 13:13,16 15:9,12,18,24 16:5 19:7,17,19 21:3,5,10 24:21 25:13,15 27:9 29:2,25 30:19,25 32:15 33:9 37:5 39:19 40:10 41:8 53:12 58:14 63:6 66:24 72:6 84:2 87:16 officers 1:5 7:8 17:18 23:4 25:23 26:14 29:13 30:16 30:21 31:3 32:2 37:12 39:13 40:20 41:23 43:3,10,11	45:7,17 46:9,19 47:3,20 63:14,24 64:13,20 67:11,14 78:18 81:10 83:16 84:13,25 85:24 86:14 94:2 officer's 45:24 official 92:10 Oh 34:19 39:9 okay 9:11,12,24 10:17,18,22 11:6 11:15,25 12:4,10 12:14,17,20 13:5 13:12,22 14:4,20 14:23 15:7,16,22 16:6,22 17:9,16 17:19 18:4,11,21 19:6,15 20:5 21:8 21:12 22:5,9 24:5 24:13,19 27:21 28:5,17,23 30:13 30:15 31:18 33:20 35:3 36:2,10,18 39:11,17 41:16,21 42:19 44:19,25 45:5,20 46:11 48:10 49:4,11 50:17,24 51:6,14 51:23 52:17 55:11 55:22 57:13 58:11 58:25 62:12 64:12 65:3 66:12 68:3 68:14 69:13 70:18 71:16 74:25 75:11 75:20 76:14 78:9 78:14 83:12 85:15 88:17 89:22 90:2 90:13,15 once 88:12 ones 24:18 46:16 47:17 ongoing 46:24 74:13 76:15 open 6:4 49:5,12,23 50:14,18,25 51:16 52:14,19 53:5,14 53:25 54:24 56:10	56:25 58:5 65:4 65:10,17 opinion 6:4 53:5 57:10,14 60:15 63:19 65:4,6,9,14 65:16 67:24 68:11 68:25 69:25 70:2 73:17 74:12,19 opinions 51:5,7,11 51:15,24 53:13 54:2,14,16 56:8,9 opportunity 43:21 opposed 31:14 option 74:23 organizational 13:20 original 44:16 outcome 73:23 79:12 80:4 93:14 outside 24:24 34:15 35:10 36:14 45:9 49:15,16 50:10 63:18 75:13 76:11 76:24 85:4 oversee 11:20 overview 11:22	party 61:6 63:2 77:10 Patrick 6:6 82:3 patrol 17:22 18:14 18:16,20,22,23 19:4 PAUL 3:9 pending 35:16,17 78:18 80:25 people 12:20 people's 31:5 person 14:7 19:12 19:16 23:22 44:17 77:22 87:25 88:15 personal 22:13,18 23:2 24:2,6 32:24 55:15 56:12 57:5 58:7 68:18,25 69:16 70:20 71:18 72:6,25 74:23 personally 13:22 14:10 36:10 personnel 11:8 18:13,17,24 19:2 21:13,17 53:6 persons 27:13 42:12 74:22 Pg 94:5 PI 24:2 Piper 3:5 4:14 8:3 8:4 place 7:13 35:21 80:12,14 87:4 placed 79:6 plaintiffs 1:6 3:3 8:2 36:12 plan 48:10,11 plans 48:21 play 73:25 please 7:21 8:19 42:6 46:23 50:2 59:22 65:19 66:3 66:17 69:10 75:17 78:24 79:3 82:15 84:19 point 56:20 58:16 61:2	
<hr/> N <hr/> N 3:1 5:1 name 7:17,24 8:6 15:14 32:15,24 94:2 named 21:4 24:18 necessarily 52:10 70:25 necessary 90:9 negotiations 34:25 never 61:2 62:5 new 1:2 3:7,7 4:3,5 4:5 7:11 8:7 43:8 43:11 68:16 69:12 69:14 75:22 84:25 North 3:17 8:3 Notary 2:13 91:14 92:17 94:24 note 89:24 November 12:16 number 6:3 7:11 24:9 32:2 65:9 82:2 NW 3:14 NYPD 11:20 12:13 12:15 25:4 48:16					
<hr/> O <hr/> oath 9:5 10:4 92:1 object 36:19 43:19 59:7 75:12 objecting 59:9 objection 10:25 11:10 12:22 14:24 16:10 20:15 21:18 23:10 24:23 25:19 26:7,15 27:10			<hr/> P <hr/> P 3:1,1 page 5:3 6:3 66:7 66:16 68:14 79:8 80:6,9 82:25 83:7 83:8,11 pandemic 7:16 papers 63:9 paragraph 75:21 Paralegal 4:14 part 13:18 26:19 39:10 40:7 53:16 80:4 participants 7:15 participate 20:5,9 42:23 participated 88:11 particular 25:5 39:25 83:11 parties 93:12		

<p>police 6:7,9 12:4 13:12,15 16:20 18:7,12 19:8 22:20,21 25:23 26:13 30:16 39:24 45:6,22 55:23 58:3 59:2,14 60:22 61:15,16 62:13 63:14,23 66:24 67:6 69:4 69:13 81:22,24 82:4,6 83:13 84:2 84:13,25 85:24 86:14</p> <p>policies 11:4,7 17:10 25:3</p> <p>policy 15:21 16:3 17:15 18:19 25:6 42:9 50:15 55:22 56:2,3 57:18,22 58:4 60:12,18,22 62:6,14,20 67:6 73:13</p> <p>POLK 92:4</p> <p>portion 36:8</p> <p>position 11:16 12:2 12:7 19:21 58:23 59:2,14 60:3 61:16,22 64:13 65:5 69:7 70:8 71:17 76:20 77:5 78:17 79:18 80:2 87:14,21</p> <p>post 60:8,18 63:13 63:23 71:6 80:7 80:14,25 86:17 89:19</p> <p>posted 80:5</p> <p>posting 80:11,18 81:8</p> <p>PowerPoint 44:12 44:15</p> <p>practices 11:7 25:3</p> <p>preceding 16:25</p> <p>prepared 44:3,15 44:17</p> <p>present 4:13 28:19</p>	<p>34:23 35:20 36:4</p> <p>presentation 19:11</p> <p>President 6:7 82:3</p> <p>previous 33:17 50:4 67:11 79:4</p> <p>previously 80:7</p> <p>Primarily 71:14</p> <p>primer 17:6</p> <p>prior 19:23 32:18 32:19 56:2,17 60:21 77:8 79:5 80:5</p> <p>privacy 11:8 15:8 15:12,18,23 16:5 18:13 21:13 22:13 22:18 23:5,8,9,19 24:4,12,21 25:12 25:14,18,23 26:13 26:22,25 27:9,15 27:25 28:4,10 31:11,14,20 32:5 34:3 55:15 56:12 57:5 58:7 59:17 60:17,24 61:19 62:3 68:8,9,18 69:16 70:17,21 71:18 72:6,25 74:24 78:19 79:21 81:9 86:16</p> <p>private 21:17 24:14</p> <p>privilege 10:17 59:7,10</p> <p>privileged 56:15 88:22 89:4,15</p> <p>problematic 32:24 33:2</p> <p>procedure 18:24</p> <p>proceed 11:22</p> <p>proceeding 46:24</p> <p>process 45:6 57:18 59:10 60:11</p> <p>produce 14:18 47:10</p> <p>produced 28:25 41:24 42:5,10 51:25,25 77:9</p> <p>producible 77:6</p>	<p>producing 37:12</p> <p>production 23:18 45:14,23 46:14 52:20</p> <p>Professional 2:13</p> <p>proper 16:18 54:25</p> <p>protect 24:21 25:12 25:14,17,22 26:12 29:12,24 33:8 39:18 40:9,19 41:7</p> <p>protected 27:2,9 56:21 60:16 74:22 78:19 80:19</p> <p>protecting 26:21</p> <p>protection 71:18 73:4</p> <p>protections 63:15 64:2,14</p> <p>protocol 26:20</p> <p>protocols 15:17 22:15 23:7</p> <p>proven 78:3 79:19</p> <p>provided 44:21</p> <p>provides 41:22</p> <p>provisions 68:16 68:17 69:15,16 70:20 75:22</p> <p>public 2:14 17:17 23:4,4 30:20 31:2 43:10,11 45:17 46:9,19 47:20 64:20 67:2,11 79:20 91:14 92:17 94:24</p> <p>publicly 32:14 86:2</p> <p>put 30:24 69:12 75:9,17</p> <p>p.m 2:5 7:4 90:19 90:21</p>	<p>30:6,8 33:14,17 35:8 39:6,7,8 40:4 40:17,18,23 47:7 49:19,23 50:2,4,8 56:6 58:25 65:24 74:8,10 78:24 79:2,4,17 82:16 84:18,19 85:11,16 88:25</p> <p>questioning 7:23</p> <p>questions 10:4,5</p> <p>quick 10:3</p> <p>Quinn 4:8 8:10</p> <p>quite 21:22 23:13 44:12</p> <p>quo 72:16</p>	<p>receives 19:7</p> <p>record 7:3 10:9 13:13 21:9,16,17 29:7 31:9 33:3 44:20 48:20 61:5 61:10,12 63:4 71:25 90:19 93:9</p> <p>records 11:9 13:16 18:13,17,24 19:2 19:2,7,17,19 21:3 21:4,13 22:7,11 23:3 24:10 25:23 26:20 27:15 42:4 42:10 46:8,20 47:24 48:8 52:21 53:6 58:14,24 60:13 63:3,10 66:24 67:2,13,20 73:3,5 74:14 83:14,24 86:2,17 88:14 89:10,20</p> <p>redact 70:16 71:25</p> <p>refer 67:10 70:11</p> <p>referring 58:20 70:12</p> <p>refers 22:6</p> <p>reflected 71:14</p> <p>reflects 70:25</p> <p>regard 15:18 16:19 18:7 39:13 50:19 52:20</p> <p>regarding 11:4 25:24 51:2 53:6 74:21</p> <p>regardless 57:2</p> <p>regards 46:6</p> <p>Registered 2:10</p> <p>regular 54:5,8</p> <p>related 93:11</p> <p>relates 70:5</p> <p>relating 21:13 63:3 66:24</p> <p>relationship 15:8,9 50:14</p> <p>release 28:19 32:12 32:22 46:20 55:12 56:11 57:3 58:5</p>
--	---	--	---	--

59:15 61:7,18,23 62:9,15 63:5,10 83:13,23 86:2 87:14,24 88:13,14 89:9,20 released 58:24 74:14 79:20 88:2 releasing 32:14,23 relevant 49:24 relied 73:14 remains 50:6 72:16 remember 18:22 18:23 44:12 REMOTE 1:15 remotely 2:9 7:15 92:7 REO 37:24 58:13 62:25 repeal 11:4 42:4,9 43:12 44:8 47:25 48:23 55:25 56:18 58:13 60:18,21 61:17 63:13,23 66:22 67:19 71:6 74:16 77:8 80:14 86:17 repealed 69:11 repeat 33:13 60:4 rephrase 10:8 21:21 report 13:8 REPORTED 1:23 reporter 2:10,11,11 2:12,13 8:14,16 33:15 93:5,20 reporting 15:9 reports 54:10 represent 7:22,25 representative 61:15 69:5 representing 7:18 8:8,10,15 request 13:23 14:11 17:24 18:2 22:17,23 23:23 24:22 25:13 26:19 26:24 27:6,8,19	27:20,22 28:9,15 30:2,18,24 34:7 39:20 40:21 47:11 49:3 61:4 66:23 66:25 72:7 77:14 requested 25:24 27:23 37:3 requesting 14:7 requests 11:8 14:15 17:11 18:8 25:15 26:14 29:13 36:25 37:9 45:12 47:24 48:6 51:3 60:7 80:25 request-by-request 48:13 required 39:25 40:5 requires 71:2 72:21 75:25 reread 78:23 researching 54:13 54:17 reserve 90:10 respect 34:7 respond 17:25 18:8 responded 13:23 14:10 37:9 responding 14:15 22:21,23 24:22 25:13,15 27:8 29:13,25 36:25 39:20 40:10,21 41:9 responds 34:8 response 33:21 35:7 47:11 responses 32:18,20 responsibility 24:20 25:12,17 26:5,9,12 29:12 29:17,21,24 30:3 39:18 40:8,14,19 41:7,14 53:17 responsive 77:15 result 71:19 revealing 56:15	89:3,15 reveals 33:4 review 26:20,24 27:5,7,13,15 28:14,18,24 35:24 43:22 44:2 46:7 47:23 48:7,11,11 51:6,11 53:25 54:9,10,11,12 87:6 reviewed 15:20 35:24 36:11 43:24 44:7 51:4 66:25 69:24 reviewing 18:23 29:8 31:8 36:3 45:12 48:25 51:18 66:2,8,11 69:25 82:14,20 revised 43:10 44:18 Rhonda 1:24 2:9 8:14 92:16 93:4 93:19 Richard 13:17 14:3 19:18 right 8:19 10:2,20 12:25 27:19,25 31:12 33:9,18 41:14 45:18 46:17 46:22 47:19 56:25 57:5 77:25 80:2 81:3,19 83:6 90:11 rights 39:19 40:9 40:20 41:8 45:6 45:15,24 46:5,15 47:2,9,17 risk 28:20,25 30:18 30:25 32:15 33:22 83:14,24 role 11:19 49:12 rquinn@law.nyc... 4:10 rules 10:3 <hr/> S <hr/> S 3:1 6:1	safety 28:20,25 29:9,12,25 30:6 30:19,25 31:3,10 31:15,19,25 32:6 32:16 33:8,22 34:9 83:15,25 85:14 87:2,7 Saint-Fort 4:7 8:5 8:6 10:25 11:10 12:22 14:24 16:10 20:15,18 21:18 23:10 24:23 25:19 26:7,15 27:10 28:11 29:3,14 30:7 31:21 33:10 34:14,17 35:5 36:13,23 37:13 38:5,14,17,24 39:21 40:11,22 41:2 43:4,19 45:8 45:25 47:5,12 48:2,15 49:6,14 49:18 50:3,5,9,20 52:3,22 53:7,18 54:18,20 55:3,16 55:19 56:13 57:6 57:15 58:8,10 59:3,6,18,23 60:4 61:20 62:17 63:17 64:3,16 65:13 67:8 68:5,24 69:18 71:7,20 72:8 73:9 75:7,11 76:10,23 78:4,10 78:14,21 79:22 80:20 81:11 82:18 83:18 84:4,14 85:3,7,15 86:4,18 87:17 88:6,20 89:2,13,23 saying 56:20 63:5 74:17 79:25 86:7 says 17:23 18:24,25 34:22 46:20 53:24 60:15 68:10 72:19 75:23 school 12:18	scope 23:7 24:24 34:15 35:10 36:14 45:9 49:15,17 50:11 63:18 71:17 72:5 75:13 76:11 76:24 85:4 scroll 66:3,9 82:15 seal 92:10 second 75:22 78:13 section 11:18 12:13 12:15,21 13:11 19:3,11 22:6,10 37:23 45:17 46:19 66:23 68:19 69:17 70:2,21 71:5 72:4 75:20 sections 44:10 67:12 69:12 see 51:12 67:4 68:20 76:4 seeks 22:17 seen 17:15 65:25 66:12,13 67:24 82:11,16,25 send 84:24 sense 10:11 sentence 66:20 68:15 72:18 75:23 separate 31:16 service 61:4 62:9 77:20 service's 61:5 63:3 session 43:17 sessions 42:12 set 93:8,15 sets 50:18 settlement 41:23 Shea 6:8 81:25 82:5 SHEET 94:1 shorthand 93:5,20 show 65:3 sic 14:16 Signature 94:19 similar 63:7 sitting 18:5 59:13 solemnly 8:20 somebody 61:3
--	--	---	--	---

89:9 somebody's 24:8 45:15 sorry 32:8 34:19 46:23 75:7 sort 24:11 sought 23:24 73:20 Southern 1:2 7:10 spec 77:9 specific 17:14 18:3 20:25 32:3 40:4,6 40:17,18 47:4 64:21 74:6 77:21 84:21 86:22 87:10 specifically 18:21 30:6 46:11 67:13 86:9,10 87:9 specification 76:22 77:17 specifications 77:6 78:3 79:14 stage 48:5 63:8 79:15 standard 7:5 26:20 90:20 standards 50:18 51:2 stands 64:20 start 12:14 started 16:24 42:8 state 2:14 7:21 22:2 62:8,21 64:7 67:21 92:3,17 93:2 statement 11:9 57:8 67:22 69:14 69:17 States 1:1 7:10 statewide 54:25 55:8 status 72:16 statute 35:15,25 stay 73:20 stays 53:12 STENOGRAPH... 8:18,25 78:25 stenographic 93:5	93:20 stigmatize 87:16 stop 65:19 stopwatch 89:25 strategies 11:22 strategized 17:5,6 Street 3:14 4:4 strike 63:21 76:20 subject 37:5 49:8 49:20,22 63:14 64:14 77:7 81:10 Subscribed 91:10 94:20 substantiated 61:10 supervise 13:5,12 supervisor 13:3,9 17:2,8 19:23 20:22 supervisors 19:10 supposed 17:25 23:3,3 24:3 46:7 70:16 Supreme 17:3 sure 10:4 21:22,25 23:13 26:21,25 27:8 28:24 30:13 35:22 36:23 41:19 43:8 44:16,18 45:2,3 50:3 swear 8:16,20 sworn 9:4 91:10 92:8 93:8 94:20	talk 10:22,24 11:6 18:15 talking 25:3 35:6 talks 22:10 tech 7:19 TECHNICIAN 4:16 telephone 24:9 tell 9:4 44:20 ten 14:23 15:4,5 tenure 20:20 terms 38:7 58:21 testified 9:5 18:9 28:6 testify 85:22 testifying 25:4 testimony 8:21 62:12 86:3 90:3 93:10 thank 8:12,25 66:10 90:3,11 Thanks 66:7 thing 10:14 things 65:6 70:15 71:24 think 15:5,13,24,25 15:25 18:25 28:13 29:16 30:3 39:23 41:25 42:2 44:13 47:2,18 53:3,23 53:24 55:5 57:19 62:20,23 64:5,18 64:24 68:7 69:6 70:7,18 71:23 73:12 84:17 87:20 87:21 third 61:6 63:2 77:10 thought 32:23 89:18 three 86:11,11 Thursday 1:17 time 7:4,5 10:14 12:13 19:13 20:4 20:8,13,22 54:12 54:12 65:13 89:24 90:5,12,20	timely 11:24 times 14:19 18:18 37:8 54:9 title 11:17 42:17 TN 2:12 today 8:14 18:5 38:23 58:3 59:14 60:3 77:12 90:3 90:12 today's 7:3 90:17 Tony 7:24 48:17 top 16:2 47:18 66:5 topic 39:10 49:24 51:13,17 topics 54:13,16 total 90:18 totality 33:4 train 17:4 19:10,22 20:22 42:12 43:3 trained 16:19 19:25 21:7 24:11 45:4 training 16:7,23 19:6,20,24 20:6 20:12,23 21:2,11 21:12 30:15 34:12 35:4 39:12 41:22 42:3,11,14,20,21 42:24 43:13,16 44:21 45:3,6 49:11 TRANSCRIPT 94:1 transparency 42:18 TransPerfect 7:18 8:15 treat 63:24 trial 45:19 46:17,21 47:19 79:8 80:6,9 80:19 trials 77:24 true 38:12,12 57:8 93:9 truth 8:22,22,23 9:5 try 10:7 38:20	54:10 trying 51:8 53:20 88:18 two 10:10 12:9 18:15,18 31:16 type 24:13 31:6,8 types 42:4
U				
ultimate 73:25 undersigned 92:6 understand 10:6 21:20 23:14 30:5 33:7 35:12 76:16 understanding 10:23 25:2 54:23 76:7 understood 84:18 unfairly 87:16 unfounded 56:10 56:11 72:22 75:5 76:2,9 87:15 Uniformed 1:5 7:7 94:2 union 37:5 unit 17:24,25 20:4 20:13,21 22:19 39:25 42:13 44:24 45:16 United 1:1 7:9 unproven 78:17 unreasonable 28:9 55:14 57:4 58:7 59:17 78:19 79:21 81:9 unsubstantiated 55:13 56:21 57:3 58:6,23 59:16 60:15,23 61:9,18 62:2,6,14,15 68:11 72:22 74:20 75:5 76:2,8 87:15 unwarranted 22:12 22:18 23:19 26:13 27:24 56:12 60:24 61:19 72:24 use 35:7,25				

uses 22:16	12:24 15:3 16:14	16:25 17:7 19:19	43:12 47:25 48:23
<hr/>	20:17,19 21:21	York 1:2 3:7,7 4:3	55:25 56:3,5,18
V	23:13 25:4,22	4:5,5 7:11 8:7	56:22 57:2 58:13
<hr/>	26:8,18 27:12	84:25	60:8,18,21 61:7
V 94:2	28:13 29:5,16	<hr/>	61:12,17,24 62:4
various 18:16	30:7 31:24 33:13	1	62:8,21 63:5,7,9
version 43:11	33:18 34:16,19	<hr/>	63:13,23 66:23
versus 7:8	36:16 37:16 38:7	1 6:4 65:8,9,16	67:19 69:11 71:6
video 7:6	38:15,18,23 39:2	66:19 75:17 81:20	73:15 74:17,22
videoconference	39:23 40:12,23	1:04 2:5 7:4	77:8,11 80:15,25
7:14	41:2 43:7 45:10	1:20-CV-05441 1:3	86:17
videographer 4:19	46:4 47:15 48:4	1:20-cv-05441(K...	50-a's 67:18
7:2,18 8:12 90:16	48:18 49:9 50:10	7:12	500 3:14
Videotaped 1:15	50:22 52:5,24	100 4:4	<hr/>
2:8	53:9,20 54:19,21	10007 4:5	6
view 52:14,16 55:8	55:5,20 56:17	10020 3:7	<hr/>
70:19 72:3	57:9,17 58:9,11	1251 3:6	6 1:17 2:4 94:3
violate 45:14,24	59:8,18,21,24	14 65:7	6th 7:4 92:11 93:16
46:14	60:6 61:22 62:20	19775 6:5 65:11,18	6/29/20 6:8,11 82:5
violation 62:16	64:5,18 65:19	<hr/>	82:8
vs 1:7	67:10 68:7 69:20	2	65 6:4
<hr/>	71:10,23 72:11	<hr/>	<hr/>
W	73:12 75:14 76:12	2 6:6 81:20 82:2,11	7
<hr/>	76:16,25 78:6,23	83:2	<hr/>
want 10:13 30:10	79:5,25 80:22	2:37 90:19,21	7/27/20 6:5 65:11
41:17 48:15 74:25	81:14 82:19,20	20004 3:15	799-4000 3:16
79:2 82:24 89:23	83:20 84:7,17	2006 12:16 16:25	<hr/>
Washington 3:15	85:8,19,21 86:7	2014 83:17	8
wasn't 39:9	86:21 87:20 88:9	2017 12:3,5 84:3	<hr/>
way 71:4 93:13	88:21 89:6,17	2018 84:11,24	82 6:6
ways 31:5	90:10,13 92:10	202 3:16	87 22:6 70:21
weapon 84:12	93:7,10,15	2020 1:17 2:4 7:4	87(2)(b) 22:10
web 7:14	Word 44:9	65:22 80:13 81:21	68:19 69:7,17
WenJian 83:16	words 27:21	81:25 91:11 92:11	70:4,22 71:2,5,18
went 79:10	work 12:21	93:16 94:3,21	72:4
we'll 65:8 76:16	wouldn't 27:5	212 3:8 4:6	87(2)(c) 34:22
we're 23:3 24:11	56:19,19 61:8,24	27 65:22	35:20
25:2 26:21 29:7	81:4	28092 1:25	89 71:19
40:5 51:18 54:12	written 17:9,15,16	29th 81:21,25	89(2)(b) 69:9,12
64:5,6,8,8,9,18,23	17:19 18:6,12,19	<hr/>	70:5,5,11,14,22
64:24 65:15 70:16	53:22	3	70:25 71:11,15,23
90:4	<hr/>	<hr/>	72:14
we've 16:2 17:4	X	30(b)(6) 10:19	<hr/>
19:9,12 36:7,7,8	<hr/>	38:23 61:14 69:4	9
48:6 58:21,22	X 5:1 6:1	85:21 90:10	<hr/>
70:7 74:15,19	<hr/>	335-4500 3:8	9 5:4
86:9 89:18,24	Y	356-2444 4:6	9/28/23 92:18
WHEREOF 93:15	<hr/>	360849 92:19	90-minute 89:24
witness 8:17,24	Yeah 48:18	<hr/>	90:5
10:20 11:3,13	years 12:9 15:5	5	
		<hr/>	
		50-a 11:4 42:5,9	